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INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

Office of the Secretary

Recordations Unit

Room 2303

Interstate Commerce Commission

12th and Constitution Avenue, N.W.

Washington, D.C. 20423

2-014A002

\$48

New Number

17673

" " - A

" " - B

Attention: Ms. Mildred Lee

JAN 14 1992 -10 55 AM

INTERSTATE COMMERCE COMMISSION

Dear Ms. Lee:

Enclosed are an original and one certified true copy of each of the documents described below, to be recorded pursuant to 49 U.S.C. §11303.

The first document, Equipment Lease Agreement, dated as of January 1, 1992, is a primary document. The names and addresses of the parties to such document are as follows:

Wilmington Trust Company
Rodney Square North
Wilmington, Delaware 19890

New Number

Burlington Northern Railroad Company
777 Main Street
Fort Worth, Texas 76102

The second document, Lease and ETA Supplement No. 1, dated January 14, 1992, is a secondary document. The names and addresses of the parties to such document are as follows:

Wilmington Trust Company
Rodney Square North
Wilmington, Delaware 19890

NEW - A

Burlington Northern Railroad Company
777 Main Street
Fort Worth, Texas 76102

JAN 14 10 47 AM '92
MOTOR OPERATING UNIT

C. T. Kappeler

CHAPMAN AND CUTLER

State Street Bank and Trust Company
of Connecticut, National Association
750 Main Street
Hartford, Connecticut 06103

The third document, Equipment Trust Agreement, dated as of January 1, 1992, is a primary document. The names and addresses of the parties to such document are as follows:

Wilmington Trust Company
Rodney Square North
Wilmington, Delaware 19890

— B

State Street Bank and Trust Company
of Connecticut, National Association
750 Main Street
Hartford, Connecticut 06103

A description of the equipment covered by each of these documents is set forth in Appendix A attached hereto.

A short summary of the documents to appear in the index follows:

Equipment Lease Agreement, dated as of January 1, 1992, between Wilmington Trust Company, not in its individual capacity except as otherwise expressly provided therein but solely as Owner Trustee, as Lessor, and Burlington Northern Railroad Company, as Lessee.

Lease and ETA Supplement No. 1, dated January 14, 1992, between Wilmington Trust Company, not in its individual capacity except as otherwise expressly provided therein but solely as Owner Trustee, as Lessor, Burlington Northern Railroad Company, as Lessee, and State Street Bank and Trust Company of Connecticut, National Association, as Equipment Trust Trustee.

Equipment Trust Agreement, dated as of January 1, 1992, between Wilmington Trust Company, not in its individual capacity except as otherwise expressly provided therein but solely as trustee, as Owner Trustee, and State Street Bank and Trust Company of Connecticut, National Association, as Equipment Trust Trustee.

Law Offices of

CHAPMAN AND CUTLER

A filing fee of \$48.00 is enclosed. Please return one stamped original copy to the undersigned.

Very truly yours,

CHAPMAN AND CUTLER

By Michael G. McFadden

Enclosures

EQUIPMENT LEASE AGREEMENT
(BN 1992-A)

Dated as of January 1, 1992

Between

WILMINGTON TRUST COMPANY,
not in its individual capacity except
as expressly provided herein but
solely as Owner Trustee,
Lessor

And

BURLINGTON NORTHERN RAILROAD COMPANY,
Lessee

36 SD60-M New Locomotives
17 GP39-2 Remanufactured Locomotives
20 Double Stack Flatcars

17673
JAN 14 1992 10 55 AM
INTERSTATE COMMERCE COMMISSION

CERTAIN OF THE RIGHT, TITLE AND INTEREST OF LESSOR IN AND TO THIS LEASE, THE EQUIPMENT COVERED HEREBY AND THE RENT DUE AND TO BECOME DUE HEREUNDER HAVE BEEN ASSIGNED AS COLLATERAL SECURITY TO, AND ARE SUBJECT TO A SECURITY INTEREST IN FAVOR OF, STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS EQUIPMENT TRUST TRUSTEE UNDER AN EQUIPMENT TRUST AGREEMENT (BN 1992-A), DATED AS OF JANUARY 1, 1992 BETWEEN SAID EQUIPMENT TRUST TRUSTEE, AS SECURED PARTY, AND LESSOR, AS DEBTOR. INFORMATION CONCERNING SUCH SECURITY INTEREST MAY BE OBTAINED FROM THE EQUIPMENT TRUST TRUSTEE AT ITS ADDRESS SET FORTH IN SECTION 20 OF THIS LEASE. THIS LEASE AGREEMENT HAS BEEN EXECUTED IN SEVERAL COUNTERPARTS, ONLY THAT COUNTERPART TO BE DEEMED THE ORIGINAL COUNTERPART FOR CHATTEL PAPER PURPOSES CONTAINS THE RECEIPT THEREFOR EXECUTED BY STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL ASSOCIATION, AS EQUIPMENT TRUST TRUSTEE, ON THE SIGNATURE PAGES THEREOF. SEE SECTION 26.2 FOR INFORMATION CONCERNING THE RIGHTS OF THE ORIGINAL HOLDER AND THE HOLDERS OF THE VARIOUS COUNTERPARTS HEREOF.

Filed with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303 on January __, 1992 at __.M. Recordation Number __, and deposited in the Office of the Registrar General of Canada pursuant to Section 90 of the Railway Act of Canada on January __, 1992, at __.M.

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ATTACHMENTS TO EQUIPMENT LEASE AGREEMENT:

Exhibit A — Form of Lease and ETA Supplement

Appendix A — Definitions

EQUIPMENT LEASE AGREEMENT
(BN 1992-A)

This EQUIPMENT LEASE AGREEMENT (BN 1992-A), dated as of January 1, 1992 (this "*Lease*"), between Wilmington Trust Company, a Delaware banking corporation, not in its individual capacity except as expressly provided herein, but solely as Owner Trustee under the Trust Agreement ("*Lessor*"), and Burlington Northern Railroad Company, a Delaware corporation ("*Lessee*"),

WITNESSETH:

SECTION 1. DEFINITIONS.

Unless the context otherwise requires, all capitalized terms used herein without definition shall have the respective meanings set forth in Appendix A hereto for all purposes of this Lease.

SECTION 2. ACCEPTANCE AND LEASING OF EQUIPMENT.

Lessor hereby agrees (subject to satisfaction or waiver of the conditions set forth in Section 4.1 and 4.3 of the Participation Agreement), simultaneously with the delivery of each Unit from Owner Participant to Lessor and acceptance thereof by Lessor, to accept delivery of such Unit from Owner Participant, as evidenced by the execution and delivery by Lessor and Lessee of a Certificate of Acceptance with respect to such Unit and thereafter to lease such Unit to Lessee hereunder, and Lessee hereby agrees (subject to satisfaction or waiver of the conditions set forth in Section 4.4 of the Participation Agreement) to lease from Lessor hereunder, such Unit, as evidenced by the execution and delivery by Lessee and Lessor of a Lease and ETA Supplement covering such Unit. Lessor hereby authorizes one or more employees of Lessee, designated by Lessee, to act on behalf of Lessor as its authorized representative or representatives to accept delivery of the Equipment, to execute and deliver such Certificate of Acceptance, all in accordance with Section 2.3(b) of the Participation Agreement. Lessee hereby agrees that such acceptance of delivery by such authorized representative or representatives on behalf of Lessor shall, without further act, irrevocably constitute acceptance by Lessee of such Unit for all purposes of this Lease.

SECTION 3. TERM AND RENT.

Section 3.1. Lease Term. The interim term of this Lease (the "*Interim Term*") for each Unit shall commence on the Closing Date with respect to such Unit and shall terminate one day before the Basic Term Commencement Date. The basic term of this Lease (the "*Basic Term*") shall commence on the Basic Term Commencement Date and, subject to earlier termination pursuant to Sections 11 and 15, shall expire at 11:59 P.M. (Chicago time) on the Basic Term Expiration Date. Subject and pursuant to Section 22.2, the Lessee may elect one or more Renewal Terms with respect to any Unit.

Section 3.2. Interim Rent and Basic Rent. Lessee hereby agrees to pay Lessor Interim Rent on the Basic Term Commencement Date. Lessee also hereby agrees to pay Lessor Basic Rent for each Unit throughout the Basic Term applicable thereto in consecutive semi-annual installments payable in arrears on each Rent Payment Date. Each such payment of Interim Rent and Basic Rent shall be in an amount equal to the product of the Equipment Cost for such Unit multiplied by the Interim Rent or Basic Rent percentage, as the case may be, for such Unit set forth opposite such Rent Payment Date on Schedule 3 to the Participation Agreement (as such Schedule 3 shall be adjusted pursuant to Section 2.6 of the Participation Agreement; such Schedule 3 as so adjusted from time to time being incorporated herein by reference).

Anything contained herein or in the Participation Agreement to the contrary notwithstanding, each installment of Interim Rent and Basic Rent (both before and after any adjustment pursuant to Section 2.6 of the Participation Agreement) shall be, under any circumstances and in any event, in an amount at least sufficient for Lessor to pay in full as of the due date of such installment any payment of principal of and interest on the Equipment Trust Certificates required to be paid by Lessor pursuant to the Equipment Trust Agreement on such due date.

Section 3.3. Supplemental Rent. Lessee also agrees to pay to Lessor, or to whomsoever shall be entitled thereto, any and all Supplemental Rent, promptly as the same shall become due and owing, or where no due date is specified, promptly after demand by the Person entitled thereto, and in the event of any failure on the part of Lessee to pay any Supplemental Rent, Lessor shall have all rights, powers and remedies provided for herein or by law or equity or otherwise as in the case of nonpayment of Basic Rent. Lessee will also pay on demand, as Supplemental Rent, to the extent permitted by applicable law, an amount equal to interest at the applicable Late Rate on any part of any installment of Basic Rent not paid when due for any period for which the same shall be overdue and on any payment of Supplemental Rent not paid when due or demanded, as the case may be, for the period from such due date or demand until the same shall be paid. All Supplemental Rent to be paid pursuant to this Section 3.3 shall be payable in the type of funds and in the manner set forth in Section 3.5.

Section 3.4. Adjustment of Rent. Lessee and Lessor agree that the Basic Rent and Stipulated Loss Value percentages shall be adjusted to the extent provided in Section 2.6 of the Participation Agreement.

Section 3.5. Manner of Payments. All Rent (other than Supplemental Rent payable to Persons other than Lessor, which shall be payable to such other Persons in accordance with written instructions furnished to Lessee by such Persons, as otherwise provided in any of the Operative Agreements or as required by law) shall be paid by Lessee to Lessor at its office at Rodney Square North, Wilmington, Delaware, 19890, Attention: Corporate Trust Administration (BN 1992-A). All Rent shall be paid by Lessee in funds consisting of lawful currency of the United States of America, which shall be immediately available to the recipient not later than 12:00 noon (New York City time) on the date of such payment, *provided* that so long as the Equipment Trust Agreement shall not have been discharged

pursuant to the terms thereof, Lessor hereby directs, and Lessee agrees, that all Rent (excluding Excepted Property) payable to Lessor and assigned to the Equipment Trust Trustee shall be paid directly to the Equipment Trust Trustee at the times and in funds of the type specified in this Section 3.5 at the office of the Equipment Trust Trustee at 750 Main Street, Hartford, Connecticut 06103, Attention: Corporate Trust Department (BN 1992-A), or at such other location in the United States of America as the Equipment Trust Trustee may otherwise direct.

SECTION 4. OWNERSHIP AND MARKING OF EQUIPMENT.

Section 4.1. Retention of Title. Lessor shall and hereby does retain, subject to the rights and interests of the Equipment Trust Trustee under the Equipment Trust Agreement so long as the Equipment Trust Agreement shall remain in effect, all incidents of ownership with respect to the Equipment (other than legal title which is held by the Equipment Trust Trustee for security purposes only) notwithstanding the delivery of the Equipment to Lessee hereunder.

Section 4.2. Duty to Number and Mark Equipment. As soon as practicable after the Closing Date for any Unit, Lessee will cause each such Unit to be numbered with its reporting mark shown on the Lease and ETA Supplement dated the Closing Date on which such Unit was delivered and covering such Unit, and will from and after such date keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting colors upon each side of each Unit, in letters not less than one inch in height, a legend substantially as follows:

**“OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH
THE INTERSTATE COMMERCE COMMISSION”**

or

**“SUBJECT TO A SECURITY AGREEMENT RECORDED
WITH THE INTERSTATE COMMERCE COMMISSION”**

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Equipment Trust Trustee's right, title and lien on and Lessor's interest in and to such Unit, the rights of Lessor under this Lease and the rights of the Equipment Trust Trustee under the Equipment Trust Agreement. Except as provided hereinabove, Lessee will not place any such Units in operation or exercise any control or dominion over the same until a required legend shall have been so marked on both sides thereof, and will replace promptly any such word or words in such legend which may be removed, defaced, obliterated or destroyed. Lessee will not change the reporting mark of any Unit except in accordance with a statement of new reporting marks to be substituted therefor, which statement shall be delivered to Lessor by Lessee and a supplement to this Lease and the Equipment Trust Agreement with respect to such new reporting marks shall be filed or recorded in all public offices where this Lease and the Equipment Trust Agreement shall have been filed or recorded.

Section 4.3. Prohibition against Certain Designations. Except as above provided, Lessee will not allow the name of any Person to be placed on any Unit as a designation that might reasonably be interpreted as a claim of ownership; *provided, however*, that subject to the delivery of the statement specified in the last sentence of Section 4.2, Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by Lessee or any permitted sublessees or any of their respective Affiliates on railroad equipment used by it of the same or a similar type.

SECTION 5. DISCLAIMER OF WARRANTIES; RIGHT OF QUIET ENJOYMENT.

Section 5.1. Disclaimer of Warranties. Without waiving any claim Lessee may have against any seller, supplier or manufacturer, LESSEE ACKNOWLEDGES AND AGREES THAT, (I) EACH UNIT IS OF A SIZE, DESIGN, CAPACITY AND MANUFACTURE SELECTED BY AND ACCEPTABLE TO LESSEE, (II) LESSEE IS SATISFIED THAT EACH UNIT IS SUITABLE FOR ITS PURPOSES, (III) NEITHER LESSOR NOR THE OWNER PARTICIPANT IS A MANUFACTURER OR A DEALER IN PROPERTY OF SUCH KIND, (IV) EACH UNIT IS LEASED HEREUNDER SUBJECT TO ALL APPLICABLE LAWS AND GOVERNMENTAL REGULATIONS NOW IN EFFECT OR HEREINAFTER ADOPTED, AND (V) LESSOR LEASES AND LESSEE TAKES EACH UNIT "AS-IS", "WHERE-IS" AND "WITH ALL FAULTS", AND LESSEE ACKNOWLEDGES THAT NEITHER LESSOR, AS LESSOR OR IN ITS INDIVIDUAL CAPACITY, NOR THE OWNER PARTICIPANT MAKES NOR SHALL BE DEEMED TO HAVE MADE, AND EACH EXPRESSLY DISCLAIMS, ANY AND ALL RIGHTS, CLAIMS, WARRANTIES OR REPRESENTATIONS EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, DESIGN, OPERATION, MERCHANTABILITY THEREOF OR AS TO THE TITLE, OF THE EQUIPMENT, THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREOF OR CONFORMITY THEREOF TO SPECIFICATIONS, FREEDOM FROM PATENT, COPYRIGHT OR TRADEMARK INFRINGEMENT, THE ABSENCE OF ANY LATENT OR OTHER DEFECT, WHETHER OR NOT DISCOVERABLE, OR AS TO THE ABSENCE OF ANY OBLIGATIONS BASED ON STRICT LIABILITY IN TORT OR ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER WITH RESPECT THERETO, except that Lessor, in its individual capacity, represents and warrants that on the applicable Closing Date, Lessor shall have received whatever title to the Equipment as was conveyed to Lessor by Owner Participant and each Unit will be free of Lessor's Liens attributable to Lessor in its individual capacity. During the Lease Term so long as no Event of Default shall have occurred and be continuing, Lessor hereby appoints and constitutes Lessee its agent and attorney-in-fact during the Lease Term to assert and enforce, from time to time, in the name and for the account of Lessor and Lessee, as their interests may appear, but in all cases at the sole cost and expense of Lessee, whatever claims and rights Lessor may have as owner of the Equipment against the manufacturers or any prior owner thereof.

Section 5.2. Quiet Enjoyment. Each party to this Agreement acknowledges notice of, and consents in all respects to, the terms of this Lease, and expressly, severally and as to its own actions only, agrees that, notwithstanding any other provision of any of the Operative Agreements, so long as no Lease Event of Default has occurred and is continuing, it shall not take or cause to be taken any action inconsistent with Lessee's rights under this Lease or otherwise through its own actions in any way interfere with or interrupt the quiet enjoyment of

the use, operation and possession of any Unit by the Lessee or any sublessee, assignee or transferee under any sublease, assignment or transfer then in effect and permitted by the terms of this Lease.

SECTION 6. RETURN OF EQUIPMENT; STORAGE.

Section 6.1. General. (a) On the expiration of the Lease Term with respect to any Unit which has not been purchased by the Purchase Option Holder, Lessee will, at its own cost and expense, deliver possession of such Unit to Lessor at any interchange point on the tracks of Lessee, f.o.b. such interchange point, as Lessor may reasonably designate to Lessee in writing at least 90 days before the end of the Lease Term, in the absence of such designation, as Lessee may select or, if Lessor has requested storage pursuant to Section 6.3, to the location determined in accordance with Section 6.3. To the extent that any maintenance logs are kept with respect to any Unit returned pursuant to this Section 6.1 and such maintenance logs are customarily made available to the purchaser of equipment of a type similar to such Unit, upon the request of Lessor and at Lessor's expense, such maintenance logs shall be made available to the Lessor or its designee upon the return of such Unit. Upon expiration of the Lease Term with respect to such Unit, compliance with the terms hereof and tender of such Unit at the location determined in accordance with this Section 6.1(a), this Lease and the obligation to pay Basic Rent and all other Rent for such Unit accruing subsequent to the expiration of the Lease Term with respect to such Unit shall terminate.

(b) In the event any Unit is not returned as hereinabove provided within 30 days (the "30-Day Period") after the expiration of the Lease Term with respect to such Unit, Lessee shall pay to Lessor, for each day after such 30-Day Period an amount equal to the daily equivalent of the arithmetic average of the Basic Rent during the Basic Term for such Unit or, if the failure to return occurs after a Renewal Term, the arithmetic average of the Basic Rent paid during the Renewal Term for such Unit. The foregoing provision for payment shall not be in abrogation of Lessor's right under Section 6.1(a) to have such Unit returned to it hereunder.

Section 6.2. Condition of Equipment. Each Unit when returned to Lessor pursuant to Section 6.1(a) shall be (i) capable of performing the functions for which it was designed, with all loading and unloading components operating, (ii) free from excessive accumulations or deposits from the commodities transported in or on the Unit during the Lease Term, (iii) in the condition required by Sections 8.1 and 9.3 and (iv) free and clear of all Liens except Lessor Liens and Permitted Liens of the type described in clause (iv) of the definition of Permitted Liens and of which Lessee does not have actual knowledge, *provided* that Lessee agrees to promptly discharge any such Permitted Lien upon return of the Unit, Lessor's sole remedy for any breach of this clause (iv) being damages at law or specific performance in equity.

Section 6.3. Storage. Upon the expiration of the Lease Term with respect to each Unit, upon written request of Lessor received at least 90 days prior to the end of the Lease Term, Lessee shall permit Lessor to store such Unit, free of charge, except as provided below, at such location on the tracks of Lessee used by Lessee for the storage of surplus rolling stock or rolling stock available for sale as shall be reasonably designated by Lessor (taking into

account, among other things, Lessee's storage capacity, security and access) in its request for storage pursuant to this Section 6.3 for a period (the "*Storage Period*") beginning on the expiration of the Lease Term and ending not more than 30 days after the later of the expiration of the Lease Term with respect to such Units or the date on which 50% of all Units to be returned at the expiration of the Lease Term have been returned. Any storage facilities provided by Lessee pursuant to this Section 6.3 shall, in all cases, be at the cost to Lessor of insurance and Lessee's out-of-pocket costs in connection with providing any services not contemplated hereby to be provided during the Storage Period and at the risk of Lessor (except, with respect to any injury to, or death of, any person exercising, either on behalf of Lessor or any prospective purchaser or user, the inspection rights granted pursuant to this Section 6.3, Lessee's gross negligence or willful misconduct). With respect to the Units stored pursuant hereto, Lessee will use reasonable efforts to carry and maintain with respect to stored Units, during the Storage Period under Lessee's insurance policies, property damage insurance and public liability insurance with respect to third party personal and property damage; *provided* that (i) Lessor pays all incremental costs associated with such insurance coverage, (ii) such insurance coverage does not negatively impact upon Lessee's loss insurance rating, and (iii) any coverage provided is above Lessee's deductibles or self-insurance retention amounts. On not more than one occasion with respect to each stored Unit and upon not less than 15 days' prior written notice from Lessor to Lessee, Lessee will, during, the Storage Period, transport such Units, at Lessee's cost and expense, to a destination or interchange point, f.o.b., such destination or interchange point, on the Lessee's lines specified by the Lessor whereupon Lessee shall have no further liability or obligation with respect to such Units. During the Storage Period, Lessee will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of such Unit, to inspect the same; *provided, however*, that such inspection shall not interfere with the normal conduct of Lessee's business and such person shall be insured to the reasonable satisfaction of Lessee with respect to any risks incurred in connection with any such inspections and Lessee (except in the case of Lessee's gross negligence or willful misconduct) shall not be liable for any injury to, or the death of, any person exercising, either on behalf of Lessor or any prospective purchaser or user, the rights of inspection granted pursuant hereto. Lessee shall not be required to store the Equipment after the Storage Period. If Lessee stores any Unit after the Storage Period, such storage shall be at the sole expense and risk of Lessor.

SECTION 7. LIENS.

Lessee will not directly or indirectly create, incur, assume or suffer to exist any Lien on or with respect to any Units or Lessee's leasehold interest therein under this Lease, except Permitted Liens, and Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge (by bonding or otherwise) any such Lien not excepted above if the same shall arise at any time.

SECTION 8. MAINTENANCE; OPERATION; POSSESSION; COMPLIANCE WITH LAWS.

Section 8.1. Maintenance. Lessee, at its own cost and expense, shall maintain, repair and keep each Unit (i) in accordance with prudent Class I railroad industry maintenance practices in existence from time to time, (ii) in a manner consistent with maintenance practices used by Lessee in respect of equipment owned or leased by Lessee similar in type to such Unit, (iii) in accordance with maintenance requirements of insurance policies covering such Unit, and (iv) in compliance, in all material respects, with all applicable laws and regulations, including any applicable Interchange Rules as applicable to continued use by Lessee; *provided, however*, that Lessee may, in good faith and by appropriate proceedings diligently conducted, contest the validity or application of any such law, regulation, requirement or rule in any reasonable manner which does not materially adversely affect the rights or interests of Lessor and the Equipment Trust Trustee in the Equipment or hereunder or otherwise expose Lessor, the Equipment Trust Trustee or the Owner Participant to criminal sanctions or release Lessee from the obligation to return the Equipment in compliance with the provisions of Section 6.2.

Section 8.2. Operation. Each Unit will be used in the general operation of Lessee's, any of its Affiliate's or any sublessee's freight rail business on Lessee's railroad system, on railroad lines over which Lessee, any Affiliate of Lessee or any sublessee has trackage rights and on railroad lines of other railroads (including in connection with barge-related rail transportation) predominantly in the United States and Canada in the usual interchange of traffic or in through or run-through service; *provided, however*, that Lessee, any Affiliate of Lessee or any sublessee will not use or operate any such Unit in any manner contrary to applicable law.

Section 8.3. Possession. Lessee will not, without the prior written consent of Lessor, sublease or otherwise in any manner deliver, transfer or relinquish possession of any Unit; *provided* that, so long as no Lease Event of Default shall have occurred and be continuing, Lessee may, without the prior written consent of Lessor, sublease any Unit to any entity which is incorporated in the United States of America (or any State thereof or the District of Columbia), Canada or Mexico, for use upon lines of a railroad company owned or operated by Lessee or such entity or by a railroad company wherever incorporated or over which Lessee, such entity or such railroad company has trackage rights or rights for operation of its trains, and upon the lines of railroad of connecting and other carriers (including in connection with barge-related rail transportation) in the usual interchange of traffic or in through or run through service, but only upon and subject and subordinate to all the terms and conditions of this Lease and the Lien of the Equipment Trust Agreement and only for a term which shall not extend beyond the end of the Lease Term; *provided, however*, that any such sublease shall by its terms require that the sublessee comply with Section 8.2. No such sublease shall relieve Lessee of its obligations under any Operative Agreement, which shall be and remain those of a principal and not a surety.

SECTION 9. MODIFICATIONS.

Section 9.1. Required Modifications. In the event the Association of American Railroads, the United States Department of Transportation, or any other United States governmental agency having jurisdiction over the operation, safety or use of railroad equipment requires that any Unit be altered, replaced or modified (a "*Required Modification*"), Lessee agrees to make such Required Modification at its own expense; *provided, however*, that Lessee may, in good faith and by appropriate proceedings diligently conducted, contest the validity or application of any such law, regulation, requirement or rule in any reasonable manner which does not adversely materially affect the rights or interests of Lessor and the Equipment Trust Trustee in the Equipment or hereunder or otherwise expose Lessor, the Equipment Trust Trustee or the Owner Participant to criminal sanctions or relieve Lessee of the obligation to return the Equipment in compliance with the provisions of Section 6.2. Subject to Section 9.3, title to any Required Modification shall immediately vest in Lessor; *provided* that, so long as the Equipment Trust Agreement is in effect, legal title to any such Required Modification for security purposes shall vest in the Equipment Trust Trustee. Notwithstanding anything herein to the contrary, if Lessee determines in good faith that any Required Modification to a Unit would be economically impractical, it shall provide written notice of such determination to Lessor and the parties hereto shall treat such Unit as if an Event of Loss had occurred as of the date of such written notice with respect to such Unit and the provisions of Sections 11.2, 11.3 and 11.4 with respect to rent, termination and disposition shall apply with respect to such Unit.

Section 9.2. Optional Modifications. Lessee at any time may modify, alter or improve any Unit (a "*Modification*"); *provided* that no Modification shall materially diminish the fair market value, utility, or remaining useful life of such Unit below the value, utility, or remaining useful life thereof immediately prior to such Modification, assuming such Unit was then in the condition required to be maintained by the terms of this Lease. Title to any Non-Severable Modifications shall be immediately vested in Lessor; *provided* that, so long as the Equipment Trust Agreement is in effect, legal title to any such Non-Severable Modification for security purposes shall vest in the Equipment Trust Trustee. Title to any Severable Modifications shall remain with Lessee. If Lessee shall at its cost cause such Severable Modifications to be made to any Unit and such Severable Modifications are reasonably necessary for the economic operation of any such Unit, Lessor shall have the right, prior to the return of such Unit to Lessor hereunder, to purchase such Severable Modifications (other than Severable Modifications consisting of proprietary or communications equipment) at their then Fair Market Sales Value. If Lessor does not elect to purchase such Severable Modifications, Lessee may remove, and shall remove if requested by Lessor, such Severable Modifications at Lessee's cost and expense.

Section 9.3. Removal of Proprietary and Communications Equipment. Notwithstanding anything to the contrary contained herein, Lessee shall at all times own and be entitled to remove at Lessee's cost and expense, any Severable Modification consisting of proprietary or communications equipment from any Unit prior to the return of such Unit; *provided that* if Lessee removes such Severable Modification that is (i) a Required

Modification and (ii) such equipment is not customarily provided by the user, Lessee shall replace such proprietary or communications equipment with non-proprietary equipment.

SECTION 10. [INTENTIONALLY OMITTED].

SECTION 11. LOSS, DESTRUCTION, REQUISITION, ETC.

Section 11.1. Event of Loss. In the event that any Unit (i) shall suffer destruction, damage, contamination or wear which, in Lessee's good faith opinion, makes repair uneconomic or renders such Unit unfit for commercial use, (ii) shall suffer theft or disappearance, (iii) shall be permanently returned to the manufacturer pursuant to any patent indemnity provisions, (iv) shall have title thereto taken or appropriated by any governmental authority under the power of eminent domain or otherwise, (v) shall be taken or requisitioned for use by any governmental authority (other than the United States government or any agency or instrumentality thereof) under the power of eminent domain or otherwise, or (vi) shall be taken or requisitioned for use by the United States government or any agency or instrumentality thereof and such taking or requisition is continuing on the last day of the Basic Term or any Renewal Term then in effect (any such occurrence being hereinafter called an "*Event of Loss*"), Lessee, in accordance with the terms of Section 11.2, shall promptly and fully inform Lessor and the Equipment Trust Trustee of such Event of Loss.

Section 11.2. Replacement or Payment upon Event of Loss. Upon the occurrence of an Event of Loss or the deemed occurrence of an Event of Loss pursuant to Section 9.1 with respect to any Unit, Lessee shall within 30 days after a Responsible Officer of Lessee shall have actual knowledge of such occurrence or deemed occurrence give Lessor and the Equipment Trust Trustee notice of such occurrence or deemed occurrence of such Event of Loss and of its election to perform one of the following options (it being agreed that if Lessee shall not have given notice of such election within such 30 days after notice of such occurrence or deemed occurrence, Lessee shall be deemed to have elected to perform the option set forth in the following paragraph (ii)):

(i) as promptly as practicable, and in any event on or before the Business Day next preceding the 121st day next following the date of such notice, in replacement for such Unit, Lessee shall comply with Section 11.4(b) and shall convey or cause to be conveyed to Lessor or, if the Equipment Trust Agreement shall then be in effect, the Equipment Trust Trustee a Replacement Unit to be leased to Lessee hereunder, such Replacement Unit to be free and clear of all Liens (other than Permitted Liens) and to have a fair market value, utility and remaining useful life at least equal to the Unit so replaced (assuming such Unit was in the condition required to be maintained by the terms of this Lease); *provided* that, if Lessee shall not perform its obligation to effect such replacement under this paragraph (i) during the period of time provided herein, then Lessee shall pay on the next succeeding Rent Payment Date that is at least 20 days after the end of such period to Lessor or, if the Equipment Trust Agreement shall then be in effect, the Equipment Trust Trustee, or in the case of Supplemental Rent, to the person entitled thereto, the amounts specified in paragraph (ii) below; or

(ii) on the next succeeding Rent Payment Date that is at least 60 days after the date of notice of such Event of Loss or deemed Event of Loss or on the date specified in the proviso to paragraph (i) above, Lessee shall pay or cause to be paid on the applicable Rent Payment Date to Lessor or, if the Equipment Trust Agreement shall then be in effect, the Equipment Trust Trustee or, in the case of Supplemental Rent, to the Persons entitled thereto, in funds of the type specified in Section 3.5, (A) an amount equal to the Stipulated Loss Value of each such Unit determined as of such Rent Payment Date, (B) all Basic Rent payable on such date in respect of such Unit and (C) all other Rent then due and payable hereunder, it being understood that until such Stipulated Loss Value is paid, there shall be no abatement or reduction of Basic Rent.

Section 11.3. Rent Termination. Upon the sale, retention or replacement of any Unit or Units in compliance with this Section 11 or upon the payment of all sums required to be paid pursuant to Section 11.2(ii) hereof in respect of any Unit or Units for which Lessee has elected to pay or deemed to have elected to pay pursuant to the proviso to Section 11.2(i) the amounts specified in paragraph 11.2(ii), the Lease Term with respect to such Unit or Units and the obligation to pay Rent for such Unit or Units accruing subsequent to the date of payment of Stipulated Loss Value pursuant to Section 11.2 shall terminate; *provided* that Lessee shall be obligated to pay all Rent in respect of such Unit or Units which has accrued up to and including the date of payment of Stipulated Loss Value pursuant to Section 11.2.

Section 11.4. Disposition of Equipment; Replacement of Unit. (a) Upon the payment of all sums required to be paid pursuant to Section 11.2 in respect of any Unit or Units, Lessor will convey to Lessee or its designee all right, title and interest of Lessor in and to such Unit or Units, "as is", "where is", without recourse or warranty, except for a warranty against Lessor's Liens (and, if the Equipment Trust Agreement shall then be in effect, request the Equipment Trust Trustee to transfer to Lessee legal title to such Unit without recourse or warranty except as to Trustee's Liens), and shall execute and deliver to Lessee or its designee such bills of sale and other documents and instruments as Lessee or its designee may reasonably request to evidence such conveyance. As to each separate Unit so disposed of, Lessee or its designee shall be entitled to any amounts arising from such disposition, plus any awards, insurance or other proceeds and damages (including any Association of American Railroads interline settlement paid upon an Event of Loss) received by Lessee, Lessor or the Equipment Trust Trustee by reason of such Event of Loss after having paid the Stipulated Loss Value attributable thereto; *provided, however*, that, with respect to any Event of Loss referred to in clauses (v) and (vi) of Section 11.1, any excess of such condemnation awards over the amount of the Stipulated Loss Value of such Unit shall be divided between Lessee and Lessor in proportion to their respective interests in such Unit.

(b) At the time of or prior to any replacement of any Unit, Lessee, at its own expense, will (A) furnish Lessor with a bill of sale and an assignment of warranties with respect to the Replacement Unit and, if the Equipment Trust Agreement shall then be in effect, Lessor will furnish the Equipment Trust Trustee with a quitclaim bill of sale with respect to the Replacement Unit, (B) cause a Lease and ETA Supplement substantially in the form of Exhibit A hereto, subjecting such Replacement Unit to this Lease, and duly executed by Lessee, to be delivered to Lessor for execution and, upon such execution, to be filed for

recordation in the same manner as provided for the original Lease and ETA Supplement in Section 16.1, (C) so long as the Equipment Trust Agreement shall not have been satisfied and discharged, cause such Lease and ETA Supplement for such Replacement Unit to be delivered to the Equipment Trust Trustee for execution and, upon such execution, to be filed for recordation in the same manner as provided for the original Lease and ETA Supplement in Section 16.1, (D) so long as the Equipment Trust Agreement shall not have been satisfied and discharged, cause a financing statement or statements with respect to the Replacement Unit to be filed in such place or places as necessary in order to perfect the security interest therein created by or pursuant to the Equipment Trust Agreement and precautionary Uniform Commercial Code financing statements naming Lessee as debtor, the Owner Trustee as secured party and the Equipment Trust Trustee as assignee of the secured party to be filed in such public offices as are deemed necessary or appropriate by the Equipment Trust Trustee, the Owner Trustee and the Owner Participant to perfect the right, title and interest of the Equipment Trust Trustee as assignee of the Owner Trustee in the Equipment, (E) furnish Lessor and, so long as the Equipment Trust Agreement shall not have been satisfied and discharged, the Equipment Trust Trustee with an opinion of Lessee's counsel (which may be Lessee's General Counsel), to the effect that (x) the bill of sale referred to in clause (A) above constitutes an effective instrument for the conveyance of title to the Replacement Unit to Lessor, (y) good and marketable title to the Replacement Unit has been delivered to Lessor or the Equipment Trust Trustee, as the case may be, free and clear of all Liens (other than Permitted Liens), and (z) all filings, recordings and other action necessary or appropriate to perfect and protect the Lessor's and the Equipment Trust Trustee's respective interests in the Replacement Unit have been accomplished, and (F) furnish Lessor and, so long as the Equipment Trust Agreement shall not have been satisfied and discharged, the Equipment Trust Trustee with a certificate of a qualified engineer (who may be the system chief mechanical officer of Lessee) certifying that the Replacement Unit has a fair market value, utility and remaining useful life at least equal to the Unit so replaced (assuming such Unit was in the condition required to be maintained by the terms of this Lease) and setting forth a reasonable basis for such conclusion in reasonable detail. For all purposes hereof, upon passage of title thereto to Lessor or the Equipment Trust Trustee, as the case may be, the Replacement Unit shall be deemed part of the property leased hereunder and the Replacement Unit shall be deemed a "Unit" of Equipment as defined herein. Upon such passage of title, Lessor will transfer to Lessee, without recourse or warranty (except as to Lessor's Liens), all Lessor's right, title and interest in and to the replaced Unit (and upon such transfer, if the Equipment Trust Agreement shall then be in effect, Lessor will request the Equipment Trust Trustee to transfer to Lessee legal title to such replaced Unit without recourse or warranty except as to Trustee's Liens), and upon such transfer, Lessor will request in writing that the Equipment Trust Trustee execute and deliver to Lessee an appropriate instrument releasing such replaced Unit from the lien of the Equipment Trust Agreement and releasing the Assignment of Warranties with respect to such Unit from the assignment and pledge under the Equipment Trust Agreement.

Section 11.5. Eminent Domain. In the event that during the Lease Term the use of any Unit is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for a period which does not constitute an Event of Loss, Lessee's obligation to pay all installments of Basic Rent shall continue for the duration of such

requisitioning or taking. Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession. Any amount referred to in this Section 11.5 which is payable to Lessee shall not be paid to Lessee, or if it has been previously paid directly to Lessee, shall not be retained by Lessee, if at the time of such payment an Event of Default shall have occurred and be continuing, but shall be paid to and held by the Lessor as security for the obligations of Lessee under this Lease, and upon the earlier of (i) 200 days after the Lessor shall have received such amount provided Lessor has not proceeded to exercise remedies under Section 15 and (ii) such time as there shall not be continuing any such Event of Default, such amount shall be paid to Lessee.

SECTION 12. INSURANCE.

Section 12.1. Property Damage and Public Liability Insurance. (a) As part of an insurance program including risk retention and self-insurance, Lessee will, at all times prior to the return of the Units to Lessor, at its own expense, cause to be carried and maintained (i) property damage insurance in respect of such Units at the time subject hereto and (ii) public liability insurance with respect to third-party personal and property damage, and Lessee will continue to carry such insurance in such amounts and for such risks and with such insurance companies and subject to such self-insurance as deemed appropriate by Lessee, but in any event not less comprehensive in amounts and against risks customarily insured against by Lessee in respect of equipment owned or leased by it similar in type to the Equipment and consistent with prudent Class I railroad industry standards, if any. Any public liability policies of insurance carried in accordance with this Section 12.1 and any policies taken out in substitution or replacement for any of such policies shall name the Owner Participant, the Lessor, as Lessor of the Equipment and in its individual capacity, and the Equipment Trust Trustee as additional insureds as their interests may appear. Lessee shall cause the property insurance on the Equipment to provide that, so long as the Equipment Trust Certificates shall remain outstanding, the proceeds up to the amount of the Stipulated Loss Value, for any loss or damage to any Unit, if any, shall be payable to the Equipment Trust Trustee under a standard mortgage loss payable clause and thereafter to Lessor. The Lessee shall, at its own expense, be entitled (so long as no Event of Default pursuant to Sections 14(a), (b), (c), (i) or (j) shall have occurred and be continuing) to make all proofs of loss and take all other steps necessary to collect the proceeds of such insurance.

(b) *Certificate of Insurance.* Lessee shall, prior to the Closing Date for each Unit hereunder, furnish Lessor and the Equipment Trust Trustee with a certificate signed by the insurer or an independent insurance broker showing the insurance then maintained by Lessee pursuant to this Section 12.1 and that all premiums thereon have been paid, or other evidence of maintenance of the insurance required hereunder satisfactory to Lessor and the Equipment Trust Trustee, and, with respect to any renewal policy or policies, shall furnish certificates or binders evidencing such renewal as soon as practicable, but in no event later than 30 days after such renewal is effected or the expiration date of the original policy or policies.

Section 12.2. Proceeds of Insurance. The entire proceeds of any property or casualty insurance or third party payments for damages to any Unit (including any Association of

American Railroads interline settlements) received by Lessor or the Equipment Trust Trustee shall be held by such party until, with respect to such Unit, the repairs referred to in clause (a) below are made as specified therein or payment of the Stipulated Loss Value is made, and such entire proceeds will be paid either: (a) to Lessee promptly following receipt by the Equipment Trust Trustee or Lessor, as the case may be, of a written application signed by Lessee for payment to Lessee for repairing or restoring the Units which have been damaged so long as (i) Lessee shall have complied with the applicable provisions of the Lease, and (ii) Lessee shall have certified that any damage to such Units shall have been fully repaired or restored; or (b) if this Lease is terminated with respect to such Unit because of an Event of Loss and Lessee has paid the Stipulated Loss Value due as a result thereof, such proceeds shall be promptly paid over to, or retained by, Lessee.

Section 12.3. Additional Insurance. In the event that Lessee shall fail to maintain insurance as herein provided, Lessor may at its option, upon ten Business Days' prior written notice to Lessee, provide such insurance and, in such event, Lessee shall, upon demand from time to time, reimburse Lessor for the cost thereof together with interest from the date of payment thereof, on the amount of the cost to Lessor of such insurance which Lessee shall have failed to maintain, at the applicable Late Rate. In addition, at any time Lessor (either directly or in the name of the Owner Participant) or the Equipment Trust Trustee may at its own expense carry insurance with respect to its interest in the Units, *provided* that such insurance does not interfere with Lessee's ability to insure the Equipment as required by this Section 12 or adversely affect Lessee's insurance or the cost thereof, it being understood that all salvage rights to each Unit shall remain with Lessee's insurers at all times. Any insurance payments received from policies maintained by Lessor or the Equipment Trust Trustee pursuant to the previous sentence shall be retained by Lessor or the Equipment Trust Trustee, as the case may be, without reducing or otherwise affecting Lessee's obligations hereunder.

SECTION 13. REPORTS; INSPECTION.

Section 13.1. Duty of Lessee to Furnish. On or before June 30, 1992, and on each June 30 thereafter, Lessee will furnish to Lessor and the Equipment Trust Trustee an accurate statement, as of the preceding December 31, showing the amount, description and reporting marks of the Units then leased hereunder, the amount, description and reporting marks of all Units that may have suffered an Event of Loss during the 12 months ending on such December 31 (or since the first Closing Date, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as Lessor may reasonably request.

Section 13.2. Lessor's Inspection Rights. Lessor, Owner Participant and the Equipment Trust Trustee each shall have the right, but not the obligation, at their respective sole cost, expense and risk (including, without limitation, the risk of personal injury or death), by their respective authorized representatives, to the extent within Lessee's control: to inspect the Equipment and Lessee's records with respect thereto, during Lessee's normal business hours and upon reasonable prior notice to Lessee; *provided, however*, that Lessee shall not be liable for any injury to, or the death of, any Person exercising, either on behalf of Lessor, the Owner Participant, the Equipment Trust Trustee or any prospective user, the rights of

inspection granted under this Section 13.2. No inspection pursuant to this Section 13.2 shall interfere with the use, operation or maintenance of the Equipment or the normal conduct of Lessee's business, and Lessee shall not be required to undertake or incur any additional liabilities in connection therewith.

SECTION 14. EVENTS OF DEFAULT.

The following events shall constitute Events of Default hereunder (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) and each such Event of Default shall be deemed to exist and continue so long as, but only as long as, it shall not have been remedied:

(a) Lessee shall fail to make any payment of Basic Rent or Interim Rent within 10 Business Days after the same shall have become due; or

(b) Lessee shall fail to make any payment of Stipulated Loss Value after the same shall have become due and such failure shall continue unremedied for 10 Business Days after receipt by Lessee of written notice of such failure from Lessor or the Equipment Trust Trustee; or

(c) Lessee shall fail to make any other payment of Supplemental Rent, including indemnity or tax indemnity payments, after the same shall have become due and such failure shall continue unremedied for a period of 30 days after receipt by Lessee of written notice of such failure from Lessor or the Equipment Trust Trustee; or

(d) Lessee shall operate any Unit in service when public liability insurance required by Section 12.1 with respect to such Unit shall not be in effect; or

(e) Lessee shall make or permit any unauthorized assignment or transfer of this Lease in violation of Section 18.2; or

(f) any material representation or warranty made by Lessee in this Lease or in the Participation Agreement is untrue or incorrect in any material respect as of the date of issuance or making thereof and such untruth or incorrectness shall continue to be material and unremedied for a period of 30 days after receipt by Lessee of written notice thereof from Lessor or the Equipment Trust Trustee; *provided* that, if such untruth or incorrectness is capable of being remedied, no such untruth or incorrectness shall constitute an Event of Default hereunder for a period of 180 days after receipt of such notice so long as Lessee is diligently proceeding to remedy such incorrectness; or

(g) Lessee shall fail to return all of the Units when required by the terms of Section 6.1, and such failure shall continue unremedied for 32 days after the expiration of the Lease Term; *provided* that no such failure to return any Unit shall constitute an Event of Default hereunder for a period of 180 days after the expiration of the Lease

Term so long as Lessee is (i) diligently proceeding to return the Units and (ii) complying with the provisions of Section 6.1(b); *provided, further*, that time is of the essence with respect to such 180-day period; or

(h) Lessee shall (i) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or (ii) consent to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it, or (iii) admit in writing its inability to pay its debts generally as they come due, or (iv) make a general assignment for the benefit of creditors, or (v) take any corporate action to authorize any of the foregoing; or

(i) an involuntary case or other proceeding shall be commenced against Lessee seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 90 days; or

(j) Lessee shall fail to observe or perform any other of the covenants or agreements to be observed or performed by Lessee hereunder or under the Participation Agreement and such failure shall continue unremedied for 30 days after notice from Lessor or the Equipment Trust Trustee to Lessee, specifying the failure and demanding the same to be remedied; *provided* that, if such failure is capable of being remedied, no such failure shall constitute an Event of Default hereunder for a period of 180 days after receipt of such notice so long as Lessee is diligently proceeding to remedy such failure;

provided that, notwithstanding anything to the contrary contained in this Lease, any failure of Lessee to perform or observe any covenant or agreement herein shall not constitute an Event of Default if such failure is caused solely by reason of an event referred to in the definition of "Event of Loss" so long as Lessee is continuing to comply with the applicable terms of Section 11. Lessor shall notify Lessee immediately upon Lessee's failure to make any payment of Basic Rent or Interim Rent after the same shall have become due; *provided* that the giving of such notice by Lessor shall not be a condition to the start of the 10 Business Days period referred to in paragraph (a) of this Section 14.

SECTION 15. REMEDIES.

Section 15.1. Remedies. Upon the occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing, Lessor may, at its option, declare this Lease to be in default by a written notice to Lessee; and at any time thereafter, so long as Lessee shall not have remedied all outstanding Events of Default, Lessor may do one or more of the following as Lessor in its sole discretion shall elect, to the extent permitted by, and subject to compliance with any mandatory requirements of, applicable law then in effect:

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof;

(b) by notice in writing to Lessee, cancel this Lease, whereupon all right of Lessee to the possession and use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but Lessee shall remain liable as hereinafter provided; and thereupon, Lessor may demand that Lessee, and Lessee shall, upon written demand of Lessor and at Lessee's expense forthwith return all of the Equipment to Lessor or its order in the manner and condition required by, and otherwise in accordance with all of the provisions of Section 6, except Section 6.1(b) and those provisions relating to periods of notice; or Lessor may by its agents enter upon the premises of Lessee or other premises where any of the Equipment may be located and take possession of and remove all or any of the Units and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its successor or assigns, to use such Units for any purpose whatever;

(c) sell any Unit at public or private sale, as Lessor may determine, free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such sale or for the proceeds thereof (except to the extent required by paragraph (f) below if Lessor elects to exercise its rights under said paragraph), in which event Lessee's obligation to pay Basic Rent and other Rent with respect to such Unit hereunder due for any periods subsequent to the date of such sale shall terminate (except to the extent that Basic Rent and other Rent are to be included in computations under paragraph (e) or (f) below if Lessor elects to exercise its rights under either of said paragraphs);

(d) hold, keep idle or lease to others any Unit as Lessor in its sole discretion may determine, free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such action or inaction or for any proceeds with respect thereto, except that Lessee's obligation to pay Basic Rent and other Rent with respect to such Unit due for any periods subsequent to the date upon which Lessee shall have been deprived of possession and use of such Unit pursuant to this Section 15 shall be reduced by the net proceeds, if any, received by Lessor from leasing such Unit to any Person other than Lessee;

(e) whether or not Lessor shall have exercised, or shall thereafter at any time exercise, any of its rights under paragraph (a), (b) or (c) above with respect to any Unit, Lessor, by written notice to Lessee specifying a payment date which shall be a Rent Payment Date not earlier than 30 days after the date of such notice, may demand that Lessee pay to Lessor, and Lessee shall pay to Lessor, on the payment date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent and other Rent for such Unit due after the payment date specified in such notice), whichever of the following amounts Lessor, in its sole discretion, shall specify in such notice: (i) an amount equal to the excess, if any, of the Stipulated Loss Value for such Unit, over the present value of the Fair Market Rental Value of such Unit or, if

Lessor has leased such Unit to others pursuant to paragraph (d) above, for the period of such lease the periodic rent payable thereunder, in each case for the remainder of the Basic Term or any Renewal Term then in effect as the case may be, as of the payment date specified in such notice, such present values to be computed on the basis of a per annum rate of discount equal to the Certificate Rate, compounded semi-annually, from the respective dates upon which such rents would be paid; or (ii) an amount equal to the excess, if any, of the Stipulated Loss Value for such Unit computed as of the payment date specified in such notice over the Fair Market Sales Value of such Unit as of the payment date specified in such notice; and

(f) if Lessor shall have sold any Unit pursuant to paragraph (c) above, Lessor, in lieu of exercising its rights under paragraph (e) above with respect to such Unit may, if it shall so elect, demand that Lessee pay to Lessor, and Lessee shall pay to Lessor, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent and any other Rent for such Unit due subsequent to the Rent Payment Date next preceding such sale), any unpaid Rent for such Unit arising in any period up to and including the Rent Payment Date next preceding the date of such sale and the Basic Rent due on that date, plus the amount, if any, by which the Stipulated Loss Value of such Unit computed as of the Rent Payment Date next preceding the date of such sale exceeds the net proceeds of such sale.

In addition, Lessee shall be liable, except as otherwise provided above, for any and all unpaid Rent due hereunder before or during the exercise of any of the foregoing remedies, and for legal fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of Lessor's remedies with respect thereto, including without limitation the repayment in full of any costs and expenses necessary to be expended in repairing any Unit in order to cause it to be in compliance with all maintenance and regulatory standards imposed by this Lease.

Section 15.2. Cumulative Remedies. The remedies in this Lease provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity.

Section 15.3. No Waiver. No delay or omission to exercise any right, power or remedy accruing to Lessor upon any breach or default by Lessee under this Lease shall impair any such right, power or remedy of Lessor, nor shall any such delay or omission be construed as a waiver of any breach or default, or of any similar breach or default hereafter occurring; nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default.

SECTION 16. FILINGS; FURTHER ASSURANCES.

Section 16.1. Filings. On or prior to the first Closing Date, Lessee will (i) cause this Lease, the Lease and ETA Supplement dated such Closing Date and the Equipment Trust Agreement to be duly filed and recorded with the ICC in accordance with 49 U.S.C. §11303, (ii) cause this Lease, the Lease and ETA Supplement dated such Closing Date and the

Equipment Trust Agreement to be deposited with the Registrar General of Canada pursuant to Section 90 of the Railway Act of Canada and cause notice of such deposit to be forthwith given in *The Canada Gazette* in accordance with said Section 90, (iii) cause such filings and notices to be filed or made as necessary or appropriate to perfect the right, title and interest of the Equipment Trust Trustee in the Equipment Trust Estate and to protect the interests of the Owner Participant, (iv) cause Uniform Commercial Code financing statements naming the Owner Trustee as debtor and the Equipment Trust Trustee as secured party to be filed in such public offices as are deemed necessary or appropriate by Lessor, the Equipment Trust Trustee and the Owner Participant to perfect the right, title and interest of the Equipment Trust Trustee in the Equipment Trust Estate and precautionary Uniform Commercial Code financing statements naming Lessee as debtor, the Owner Trustee as secured party and the Equipment Trust Trustee as assignee of the secured party to be filed in such public offices as are deemed necessary or appropriate by the Equipment Trust Trustee, the Owner Trustee and the Owner Participant to perfect the right, title and interest of the Equipment Trust Trustee as assignee of the Owner Trustee in the Equipment, and (v) file, register or record this Lease, the Lease and ETA Supplement and the Equipment Trust Agreement and all financing and continuation statements and similar instruments, in such other places within the United States and Canada as Lessor, the Equipment Trust Trustee and the Owner Participant may reasonably request, and will furnish Lessor and the Equipment Trust Trustee proof thereof.

Section 16.2. Additional Filings. On or prior to the second Closing Date, Lessee will (i) cause the Lease and ETA Supplement dated such Closing Date to be duly filed and recorded with the ICC in accordance with 49 U.S.C. §11303, (ii) cause the Lease and ETA Supplement dated such Closing Date to be deposited with the Registrar General of Canada and cause notice of such deposit to be forthwith given in *The Canada Gazette* pursuant to Section 90 of the Railway Act of Canada, and (iii) cause such filings and notices to be filed or made as necessary or appropriate to perfect the right, title and interest of the Equipment Trust Trustee in the Equipment Trust Estate and to protect the interests of the Owner Participant, (iv) file, register or record the Lease and ETA Supplement dated such Closing Date, and all financing and continuation statements and similar instruments, in such other places within the United States and Canada as Lessor, the Equipment Trust Trustee and the Owner Participant may reasonably request, and will furnish Lessor and the Equipment Trust Trustee proof thereof.

Section 16.3. Further Assurances. Lessee will duly execute and deliver to Lessor such further documents and assurances and take such further action as Lessor may from time to time reasonably request in order to effectively carry out the intent and purpose of this Lease and to establish and protect the rights and remedies created in favor of Lessor hereunder, including, without limitation, if requested by Lessor, the execution and delivery of supplements or amendments hereto, in recordable form, subjecting to this Lease any Replacement Unit and the recording or filing of counterparts hereof or thereof in accordance with the laws of such jurisdiction as Lessor may from time to time deem advisable, and the filing of financing statements with respect thereto; *provided* that this sentence is not intended to impose upon Lessee any additional liabilities not otherwise contemplated by this Lease.

Section 16.4. Expenses. Except as provided in Section 2.5 of the Participation Agreement, Lessee will pay all costs, charges and expenses (including reasonable attorneys' fees) incident to any such filing, refiling, recording and rerecording or depositing and re-depositing of any such instruments or incident to the taking of such action.

SECTION 17. LESSOR'S RIGHT TO PERFORM.

If Lessee fails to make any payment required to be made by it hereunder or fails to perform or comply with any of its other agreements contained herein and such failure can be cured with the payment of money, Lessor may itself make such payment or perform or comply with such agreement, after giving not less than five Business Days' prior notice thereof to Lessee (except in the event that an Event of Acceleration resulting solely from an Event of Default shall have occurred and be continuing, in which event Lessor may effect such payment, performance or compliance to the extent necessary to cure such Event of Acceleration with notice given concurrently with such payment, performance or compliance) in a reasonable manner, but shall not be obligated hereunder to do so, and the amount of such payment and of the reasonable expenses of Lessor incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the Late Rate, to the extent permitted by applicable law, shall be deemed to be Supplemental Rent, payable by Lessee to Lessor on demand.

SECTION 18. ASSIGNMENT.

Section 18.1. Assignment by Lessor. Lessee and Lessor hereby confirm that concurrently with the execution and delivery of this Lease, Lessor has executed and delivered to the Equipment Trust Trustee the Equipment Trust Agreement, which transfers title to the Equipment for security purposes to the Equipment Trust Trustee and assigns as collateral security and grants a security interest to the Equipment Trust Trustee in, to and under this Lease and certain of the Rent payable hereunder, all as more explicitly set forth in the Granting Clause of the Equipment Trust Agreement. Lessor agrees that it shall not otherwise assign or convey its right, title and interest in and to this Lease, the Equipment or any Unit, except as expressly permitted by and subject to the provisions of the Participation Agreement, the Trust Agreement and the Equipment Trust Agreement.

Section 18.2. Assignment by Lessee. Except as otherwise provided in Section 8.3 or in the case of any requisition for use by an agency or instrumentality of the United States government referred to in Section 11.1, Lessee will not, without the prior written consent of Lessor, assign any of its rights hereunder, except as provided in the Participation Agreement.

Section 18.3. Sublessee's Performance and Rights. Any obligation imposed on Lessee in this Lease shall require only that Lessee perform or cause to be performed such obligation, even if stated herein as a direct obligation, and the performance of any such obligation by any permitted assignee, sublessee or transferee under an assignment, sublease or transfer agreement then in effect and permitted by the terms of this Lease shall constitute performance by Lessee and discharge such obligation by Lessee. Except as otherwise expressly provided

herein, any right granted to Lessee in this Lease shall grant Lessee the right to exercise such right or permit such right to be exercised by any such, assignee, sublessee or transferee, provided that Lessee's renewal option set forth in Section 22.2 may be exercised only by Lessee itself or by any assignee or transferee of, or successor to, Lessee in a transaction permitted by Section 6.8 of the Participation Agreement. The inclusion of specific references to obligations or rights of any such assignee, sublessee or transferee in certain provisions of this Lease shall not in any way prevent or diminish the application of the provisions of the two sentences immediately preceding with respect to obligations or rights in respect of which specific reference to any such assignee, sublessee or transferee has not been made in this Lease.

SECTION 19. NET LEASE, ETC.

This Lease is a net lease and Lessee's obligation to pay all Rent payable hereunder shall, subject to Section 24, be absolute and unconditional under any and all circumstances of any character including, without limitation, any abatement of Rent or setoff (except as provided in Section 24) against Rent; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of Lessor or Lessee be otherwise affected, by reason of, any defect in, damage to or loss or destruction of, or requisitioning of, any Unit, by condemnation or otherwise, the prohibition of Lessee's use of any Unit, the interference with such use by any Person or the lack of right, power or authority of Lessor or any other Person to enter into this Lease or any Operative Agreement, or for any other cause, whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Rent payable by Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated in accordance with the terms of this Lease. To the extent permitted by applicable law, Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease with respect to any Unit, except in accordance with the express terms hereof. If for any reason whatsoever this Lease shall be terminated in whole or in part by operation of law or otherwise, except as specifically provided herein, Lessee nonetheless agrees, to the maximum extent permitted by law, to pay to Lessor or to the Equipment Trust Trustee, as the case may be, an amount equal to each installment of Basic Rent and all Supplemental Rent due and owing, at the time such payment would have become due and payable in accordance with the terms hereof had this Lease not been terminated in whole or in part. Nothing contained herein shall be construed to waive any claim which Lessee might have under any of the Operative Agreements or otherwise or to limit the right of Lessee to make any claim it might have against Lessor or any other Person or to pursue such claim in such manner as Lessee shall deem appropriate.

SECTION 20. NOTICES.

Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices provided for herein shall be in writing or by a telecommunications device capable of creating a written record, and any such notice shall

become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail and courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of notice by such a telecommunications device, upon transmission thereof, provided such transmission is promptly confirmed in writing by either of the methods set forth in clauses (a) and (b) above, in each case addressed to the following Person at its respective address set forth below or at such other address as such Person may from time to time designate by written notice to the other Persons listed below:

If to Lessor:

Wilmington Trust Company
Rodney Square North
Wilmington, Delaware 19890
Attention: Corporate Trust Administration
(BN 1992-A)

Fax No.: (302) 651-8464
Confirmation No.: (302) 651-1000

With copies to:

BN Leasing Corporation
777 Main Street
Fort Worth, Texas 76102
Attention: Treasurer
Fax No.: (817) 878-2314
Confirmation No.: (817) 878-7901

If to the Equipment Trust Trustee:

State Street Bank and Trust Company of
Connecticut, National Association
750 Main Street
Hartford, Connecticut 06103
Attention: Corporate Trust Department
(BN 1992-A)

Fax No.: (203) 244-1899
Confirmation No.: (203) 244-1800

If to Lessee:

Burlington Northern Railroad Company
777 Main Street
Fort Worth, Texas 76102
Attention: Treasurer
Fax No.: (817) 878-2314
Confirmation No.: (817) 878-7901

SECTION 21. CONCERNING THE EQUIPMENT TRUST TRUSTEE.

Section 21.1. Limitation of Equipment Trust Trustee's Liabilities. Notwithstanding any provision herein or in any of the Operative Agreements to the contrary, the Equipment Trust Trustee's obligation to take or refrain from taking any actions, or to use its discretion (including, but not limited to, the giving or withholding of consent or approval and the exercise of any rights or remedies under such Operative Agreements), and any liability therefor, shall, in addition to any other limitations provided herein or in the other Operative Agreements, be limited by the provisions of the Equipment Trust Agreement, including, but not limited to, Article 8 thereof.

Section 21.2. Right, Title and Interest of Equipment Trust Trustee under Lease. It is understood and agreed that the right, title and interest of the Equipment Trust Trustee in, to and under this Lease and the Rent due and to become due hereunder shall by the express terms granting and conveying the same be subject to the interest of Lessee in and to the Equipment.

**SECTION 22. TERMINATION UPON PURCHASE BY PURCHASE OPTION HOLDER;
OPTIONS TO RENEW.**

Section 22.1. Termination upon Purchase by Purchase Option Holder. If, on the Basic Term Expiration Date, the Purchase Option Holder shall have exercised its option to purchase any Unit pursuant to Section 9 of the Participation Agreement, upon payment by the Purchase Option Holder of the purchase price with respect to such Unit as provided in Section 9 of the Participation Agreement, and upon payment by Lessee of all Rent then due and payable under this Lease with respect to such Unit, the Lease Term shall end with respect to such Unit and the obligations of Lessee to pay Rent hereunder with respect to such Unit (except for Supplemental Rent obligations surviving pursuant to the Participation Agreement or the Tax Indemnity Agreement or which have otherwise accrued but not been paid as of the date of such payment) shall cease.

Section 22.2. Renewal Option at Expiration of Basic Term or Renewal Term. (a) So long as no Event of Default shall have occurred and be continuing and subject to Section 22.1, Lessee shall have the right upon not less than 90 days prior irrevocable notice to Lessor, on the Basic Term Expiration Date, to renew this Lease with respect to any Unit for one Renewal Term of up to six years (the "Fixed Rate Renewal Term"), commencing on the Renewal Term Commencement Date for such Units; *provided* that the aggregate duration of the Fixed Rate Renewal Term for such Units, when added to the duration of the Interim Term for such Units

and the Basic Term for such Units, shall not exceed either (i) 80% of the estimated useful life of such Units, or (ii) the point at which such Units are estimated to have a Fair Market Sales Value of 20% of the original Equipment Cost of such Units (without giving effect to inflation or deflation since the Closing Date for such Units), in each case as determined by appraisal (in accordance with the procedures set forth in the definition of "*Fair Market Sales Value*"), completed at a point prior to the end of the Basic Term selected by Lessee. All of the provisions of this Lease shall be applicable during the Fixed Rate Renewal Term for such Units, except that the Stipulated Loss Values for such Units shall be determined in accordance with Section 22.5 hereof, and Basic Rent for such Units shall be equal to the lesser of (i) the Fair Market Rental Value for such Units and (ii) fifty percent (50%) of the average annual Basic Rent of such Units over the Basic Term, and shall be payable semi-annually in arrears.

(b) So long as no Event of Default shall have occurred and be continuing and subject to Section 22.1, Lessee shall have the right, upon not less than 180 days prior notice (which shall become irrevocable if not revoked at least 90 days prior to the end of the Fixed Rate Renewal Term or the current Fair Market Renewal Term pursuant to this Section, as the case may be) to Lessor at the end of the Fixed Rate Renewal Term or any Fair Market Renewal Term pursuant to this Section, to renew this Lease with respect to any Unit for one or more Fair Market Renewal Terms of not less than one year, commencing at the end of any Renewal Term. Basic Rent for any such Renewal Term equal to the then Fair Market Rental Value of such Units shall be payable in semi-annual installments in arrears. All other provisions of this Lease, shall be applicable during any such Renewal Term for such Units, except that the Stipulated Loss Values for such Units shall be determined in accordance with Section 22.5.

Section 22.3. Lessee's Notice. Not less than 180 days prior to the expiration of the Basic Term Lessee agrees to provide Lessor with a good faith, non-binding indication of its current intention with respect to whether it will (i) renew this Lease with respect to any Units pursuant to Section 22.2 hereof, or (ii) return such Units to Lessor pursuant to Section 6 hereof.

Section 22.4. Determination of Fair Market Rental Value. Lessee may notify Lessor that Lessee desires a determination of the Fair Market Rental Value of such Units for a Renewal Term commencing upon the Renewal Term Commencement Date. Lessee's request for a determination of Fair Market Rental Value shall not obligate Lessee to exercise any of the options provided in Section 22.2.

Section 22.5. Stipulated Loss Value During Renewal Term. During the Fixed Rate Renewal Term, the Stipulated Loss Value of any Unit shall be determined on the basis of the Fair Market Sales Value of such Unit as of the first day of such Renewal Term, reduced in equal monthly increments to the Fair Market Sales Value of such Unit as of the last day of such Renewal Term. During any Fair Market Renewal Term the Stipulated Loss Value of any Unit shall be determined by amortizing the Fair Market Sales Value of such Unit as of the first day of such Renewal Term down to the Fair Market Sales Value of such Unit as of the last day of such Renewal Term at the implicit interest rate imputed when discounting on a monthly basis the renewal rents and the Fair Market Sales Value as of the last day of such Renewal Term back to the Fair Market Sales Value as of the first day of such Renewal Term.

SECTION 23. LIMITATION OF LESSOR'S LIABILITY.

It is expressly agreed and understood that all representations, warranties and undertakings of Lessor hereunder (except as expressly provided herein) shall be binding upon Lessor only in its capacity as Owner Trustee under the Trust Agreement and in no case shall Wilmington Trust Company be personally liable for or on account of any statements, representations, warranties, covenants or obligations stated to be those of Lessor hereunder, except that Lessor (or any successor Owner Trustee) shall be personally liable for its gross negligence or willful misconduct or for its breach of its covenants, representations and warranties contained herein to the extent covenanted or made in its individual capacity.

SECTION 24. LESSEE'S RIGHT OF SET-OFF.

If at any time that Lessee is required to make a payment of Stipulated Loss Value pursuant to Section 11, or if at the time that Lessee is required to make a payment of Stipulated Loss Value Lessee is also required to make any indemnity payment pursuant to Section 7 of the Participation Agreement or Section 3 of the Tax Indemnity Agreement, there shall exist a Lessor's Lien, or the Owner Participant shall have failed to reimburse Lessee for the costs, and expenses incurred by Lessee to lift a Lessor's Lien, attributable to any act or omission of or claim against the Owner Participant, or Lessor has breached Lessee's right of quiet enjoyment, Lessee shall be entitled to deduct from the portion required to be paid to the Owner Participant or Owner Trustee of such payment of Stipulated Loss Value or such payment of indemnity, as the case may be, an amount sufficient to discharge such Lessor's Lien or to so reimburse Lessee, as the case may be. Notwithstanding anything contained in this Section 24 to the contrary, any payments of Stipulated Loss Value made to the Equipment Trust Trustee shall be in an amount which, together with any other amounts payable hereunder, is at least sufficient to pay in full, as of the date of payment thereof, the amount of principal of, and any accrued and unpaid interest on, the Equipment Trust Certificates and, to such extent, shall not be subject to set-off hereunder.

SECTION 25. INVESTMENT OF SECURITY FUNDS; MISCELLANEOUS.

Any moneys received by Lessor or Equipment Trust Trustee pursuant to Section 12.2 which are required to be paid to Lessee after completion of repairs to be made pursuant to Section 12.2 shall, until paid to Lessee as provided in Section 12.2 or as otherwise applied as provided herein or in the Trust Agreement and Equipment Trust Agreement, be invested in Permitted Investments by Lessor (unless the Equipment Trust Agreement shall not have been discharged, in which case, by the Equipment Trust Trustee as provided in Section 8.04(b) of the Equipment Trust Agreement) from time to time as directed in writing by Lessee if such investments are reasonably available for purchase. There shall be promptly remitted to Lessee any gain (including interest received) realized as the result of any such investment (net of any fees, commissions and other expenses, if any, incurred in connection with such investment) and Lessee will promptly pay to Lessor or the Equipment Trust Trustee, as the case may be, on demand, the amount of any loss realized as the result of any such investment (together with any fees, commissions and other expenses, if any, incurred in connection with such

investment), such amount to be disposed of in accordance with the terms of the Trust Agreement and the Equipment Trust Agreement.

SECTION 26. MISCELLANEOUS.

Section 26.1. Governing Law; Severability. This Lease, and any extensions, amendments, modifications, renewals or supplements hereto shall be delivered in New York and shall be governed by and construed in accordance with the internal laws and decisions (as opposed to conflicts of law provisions) of the State of New York; *provided, however*, that the parties shall be entitled to all rights conferred by any applicable Federal statute, rule or regulation. Whenever possible, each provision of this Lease shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Lease shall be prohibited by or invalid under the laws of any jurisdiction, such provision, as to such jurisdiction, shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Lease in any other jurisdiction.

Section 26.2. Execution in Counterparts. This Lease may be executed in any number of counterparts, each executed counterpart constituting an original and in each case such counterparts shall constitute but one and the same instrument; *provided, however*, that to the extent that this Lease constitutes chattel paper (as such term is defined in the Uniform Commercial Code) no security interest in this Lease may be created through the transfer or possession of any counterpart hereof other than the counterpart bearing the receipt therefor executed by the Equipment Trust Trustee on the signature page hereof, which counterpart shall constitute the only "original" hereof for purposes of the Uniform Commercial Code.

Section 26.3. Headings and Table of Contents; Section References. The headings of the sections of this Lease and the Table of Contents are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof. All references herein to numbered sections, unless otherwise indicated, are to sections of this Lease.

Section 26.4. Successors and Assigns. This Lease shall be binding upon and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective permitted successors and assigns.

Section 26.5. True Lease. It is the intent of the parties to this Lease that it will be a true lease and not a "conditional sale," and that Lessor shall at all times be considered to be the owner of each Unit which is the subject of this Lease for the purposes of all Federal, state, city and local income taxes or for franchise taxes measured by income, and that this Lease conveys to Lessee no right, title or interest in any Unit except as lessee. Nothing contained in this Section 26.5 shall be construed to limit Lessee's use or operation of any Unit or constitute a representation, warranty or covenant by Lessee as to tax consequences.

Section 26.6. Amendments and Waivers. No term, covenant, agreement or condition of this Lease may be terminated, amended or compliance therewith waived (either generally or in

a particular instance, retroactively or prospectively) except by an instrument or instruments in writing executed by each party hereto; *provided, however*, that any breach or default, once waived in writing, unless otherwise specified in such waiver, shall not be deemed continuing for any purpose of the Operative Agreements.

Section 26.7. Survival. All warranties, representations, indemnities and covenants made by any party hereto, herein or in any certificate or other instrument delivered by any such party or on the behalf of any such party under this Lease, shall be considered to have been relied upon by each other party hereto and shall survive the consummation of the transactions contemplated hereby on any Closing Date regardless of any investigation made by any such party or on behalf of any such party.

Section 26.8. Business Days. If any payment is to be made hereunder or any action is to be taken hereunder on any date that is not a Business Day, such payment or action otherwise required to be made or taken on such date shall be made or taken on the immediately succeeding Business Day with the same force and effect as if made or taken on such scheduled date and as to any payment (provided any such payment is made on such succeeding Business Day) no interest shall accrue on the amount of such payment from and after such scheduled date to the time of such payment on such next succeeding Business Day.

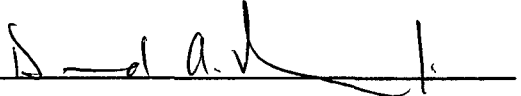
Section 26.9. Directly or Indirectly. Where any provision in this Lease refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

Section 26.10. Incorporation by Reference. The payment obligations set forth in the Tax Indemnity Agreement and Sections 7.1 and 7.2 of the Participation Agreement are hereby incorporated by reference.

IN WITNESS WHEREOF, the Lessor and the Lessee have caused this Lease to be duly executed and delivered on the day and year first above written.


LESSOR:

WILMINGTON TRUST COMPANY, not in its
individual capacity except as otherwise
expressly provided but solely as Owner
Trustee

By: 
Name: DAVID A. VANASKEY, JR.
Title: FINANCIAL SERVICES OFFICER

LESSEE:

BURLINGTON NORTHERN RAILROAD
COMPANY

By: 
Name: Robert F. McKenney
Title: Senior Vice President and Treasurer

STATE OF New York)
) SS:
COUNTY OF New York)

On this 13th day of January, 1992, before me personally appeared David A. Vanaskey, Jr. to me personally known, who being by me duly sworn, says that he/she is a Officer of Wilmington Trust Company, that said instrument was signed and sealed on January 13th, 1992, on behalf of said corporation by authority of its Board of Directors; and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

JOAN CABROL
Notary Public, State of New York
No. 00037
Qualified in Nassau County
Certificate Filed in New York County
Commission Expires 9-14-93

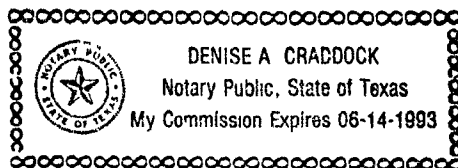
By Joan Cabrol
Notary Public

(SEAL)

My Commission Expires: 9-14-93

STATE OF TEXAS)
) SS:
COUNTY OF TARRANT)

On this 13th day of January, 1992, before me personally appeared Robert F. McKenney to me personally known, who being by me duly sworn, says that he is a Sr. V.P. and Treasurer of Burlington Northern Railroad Company, that said instrument was signed and sealed on January 13, 1992, on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



By Denise A. Craddock
Notary Public

(SEAL)

My Commission Expires: June 14, 1993

EXHIBIT A

FORM OF
LEASE AND ETA SUPPLEMENT (BN 1992-A)

Dated as of January 1, 1992

Between

WILMINGTON TRUST COMPANY,
not in its individual capacity except as expressly provided
herein but solely as Owner Trustee,

Lessor,

BURLINGTON NORTHERN RAILROAD COMPANY,

Lessee

and

STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL ASSOCIATION,
Equipment Trust Trustee

36 SD60-M New Locomotives
17 GP39-2 Remanufactured Locomotives
20 Double Stack Flatcars

CERTAIN OF THE RIGHT, TITLE AND INTEREST OF LESSOR IN AND TO THIS LEASE AND ETA SUPPLEMENT, THE EQUIPMENT COVERED HEREBY AND THE RENT DUE AND TO BECOME DUE UNDER THE LEASE HAVE BEEN ASSIGNED AS COLLATERAL SECURITY TO, AND ARE SUBJECT TO A SECURITY INTEREST IN FAVOR OF, STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS EQUIPMENT TRUST TRUSTEE UNDER AN EQUIPMENT TRUST AGREEMENT (BN 1992-A), DATED AS OF JANUARY 1, 1992, BETWEEN SAID EQUIPMENT TRUST TRUSTEE, AS SECURED PARTY, AND THE LESSOR, AS DEBTOR. INFORMATION CONCERNING SUCH SECURITY INTEREST MAY BE OBTAINED FROM THE EQUIPMENT TRUST TRUSTEE AT ITS ADDRESS SET FORTH IN SECTION 20 OF THE LEASE. THIS LEASE AND ETA SUPPLEMENT HAS BEEN EXECUTED IN SEVERAL COUNTERPARTS, ONLY THAT COUNTERPART TO BE DEEMED THE ORIGINAL COUNTERPART FOR CHATTEL PAPER PURPOSES CONTAINS THE RECEIPT THEREFOR EXECUTED BY STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL ASSOCIATION, AS EQUIPMENT TRUST TRUSTEE, ON THE SIGNATURE PAGES THEREOF. SEE SECTION 26.2 OF THE LEASE FOR INFORMATION CONCERNING THE RIGHTS OF THE ORIGINAL HOLDER AND THE HOLDERS OF THE VARIOUS COUNTERPARTS HEREOF.

Filed with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303 on January __, 1992 at _____.M. Recordation Number _____, and deposited in the Office of the Registrar General of Canada pursuant to Section 90 of the Railway Act of Canada on January __, 1992, at _____.M.

LEASE AND ETA SUPPLEMENT (BN 1992-A) NO. _____

LEASE AND ETA SUPPLEMENT (BN 1992-A) NO. _____ dated _____, 1992, (this "*Lease and ETA Supplement*") between Wilmington Trust Company, a Delaware banking corporation, not in its individual capacity but solely as Owner Trustee ("*Lessor*") under the Trust Agreement, BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation ("*Lessee*"), and STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL ASSOCIATION, a national banking association ("*Equipment Trust Trustee*");

WITNESSETH:

WHEREAS, Lessor and Lessee have heretofore entered into that certain Equipment Lease Agreement (BN 1992-A) dated as of January 1, 1992 (the "*Lease*"). Unless otherwise defined herein, capitalized terms used herein shall have the meanings specified in Appendix A to the Lease;

WHEREAS, the Participation Agreement and the Lease provide that on each Closing Date, Owner Participant shall deliver to Owner Trustee a Bill of Sale dated such date by which Owner Participant bargains, conveys, assigns, sets over, sells and delivers to Owner Trustee, and Owner Trustee purchases and accepts from Owner Participant, the Units to be conveyed on such Closing Date, and said Bill of Sale has been delivered by Owner Participant and accepted by Owner Trustee on such Closing Date;

WHEREAS, the Participation Agreement, the Lease and the Equipment Trust Agreement provide for the execution and delivery of a Lease and ETA Supplement substantially in the form hereof for the purpose of confirming the acceptance and lease of the Units under the Lease as and when delivered by Lessor to Lessee in accordance with the terms thereof and conveying legal title to such Units to the Equipment Trust Trustee for security purposes only under the Equipment Trust Agreement;

NOW, THEREFORE, in consideration of the premises and other good and sufficient consideration, Lessor, Lessee and the Equipment Trust Trustee hereby agree as follows:

1. Lessee hereby acknowledges and confirms that it has inspected and approved the Units set forth on Schedule 1 hereto at the time and on the dates set forth in the applicable Certificate(s) of Acceptance and such Units comply in all material respects with the specifications for such Units and are in good working order.

2. The Equipment Trust Trustee hereby confirms delivery and lease to Lessor, and Lessor hereby confirms acceptance and lease from the Equipment Trust Trustee, under the Equipment Trust Agreement as hereby supplemented, the Units listed on Schedule 1 hereto.

3. Lessor hereby confirms delivery and lease to Lessee, and Lessee hereby confirms acceptance and lease from Lessor, under the Lease as hereby supplemented, the Units listed on Schedule 1 hereto.

4. Lessee hereby represents and warrants that no Event of Loss has occurred with respect to the Units set forth on Schedule 1 hereto as of the date hereof.

5. The Closing Date of the Units described above is the date of this Lease and ETA Supplement set forth in the opening paragraph hereof.

6. The aggregate Equipment Cost of the Units leased hereunder is \$_____ and the amounts comprising such Equipment Cost are set forth on Schedule 1 hereto. The Stipulated Loss Values applicable in respect of the Units are set forth on Schedule 4 to the Participation Agreement.

7. In order to secure the prompt payment of the principal of, premium, if any, and interest on the Equipment Trust Certificates issued on the date hereof and on any other Equipment Trust Certificates Outstanding, Lessor has (i) conveyed legal title to the Units listed on Schedule 1 attached hereto to the Equipment Trust Trustee for security purposes only and (ii) granted, conveyed, pledged, sold, mortgaged, assigned, transferred and set over a security interest unto the Equipment Trust Trustee in the Lease and this Lease and ETA Supplement, in each case excluding Excepted Property, to have and to hold unto the Equipment Trust Trustee and its successors and assigns for its and their own use and benefit forever.

8. Lessor hereby confirms its agreement, in accordance with the Equipment Trust Agreement as supplemented by this Lease and ETA Supplement, to pay ETA Rent to the Equipment Trust Trustee for each Unit leased hereunder as provided for in the Equipment Trust Agreement.

9. Lessee hereby confirms its agreement, in accordance with the Lease as supplemented by this Lease and ETA Supplement to pay Rent to Lessor for each Unit leased hereunder as provided for in the Lease.

10. The execution and delivery of this Lease and ETA Supplement will in no way relieve or decrease the responsibility of any manufacturer for the warranties it has made with respect to any Unit.

11. Any and all notices, requests, certificates and other instruments executed and delivered after the execution and delivery of this Lease and ETA Supplement may refer to the "Equipment Lease Agreement, dated as of January 1, 1992," the "Lease Agreement, dated as of January 1, 1992" or the "Lease, dated as of January 1, 1992," or may identify the Lease in any other respect without making specific reference to this Lease and ETA Supplement, but nevertheless all such references shall be deemed to include this Lease and ETA Supplement, unless the context shall otherwise require. Any and all notices, requests, certificates and other instruments executed and delivered

after the execution and delivery of this Lease and ETA Supplement may refer to the "Equipment Trust Agreement, dated as of January 1, 1992," or may identify the Equipment Trust Agreement in any other respect without making specific reference to this Lease and ETA Supplement, but nevertheless all such references shall be deemed to include this Lease and ETA Supplement, unless the context shall otherwise require.

12. This Lease and ETA Supplement shall be construed in connection with and as part of the Lease and the Equipment Trust Agreement, and all terms, conditions and covenants contained in the Lease or the Equipment Trust Agreement shall be and remain in full force and effect.

13. This Lease and ETA Supplement may be executed in any number of counterparts, each executed counterpart constituting an original but all together one and the same instrument.

14. This Lease and ETA Supplement is being delivered in the State of New York and shall in all respects be governed by, and construed in accordance with, the laws of the State of New York, including all matters of construction, validity and performance.

IN WITNESS WHEREOF, the Lessor, the Lessee and the Equipment Trust Trustee have caused this Lease to be duly executed and delivered on the day and year first above written.

LESSOR:

WILMINGTON TRUST COMPANY, not in its individual capacity except as otherwise expressly provided but solely as Owner Trustee

By: _____
Name:
Title:

LESSEE:

BURLINGTON NORTHERN RAILROAD
COMPANY

By: _____
Name:
Title:

EQUIPMENT TRUST TRUSTEE:

STATE STREET BANK AND TRUST COMPANY
OF CONNECTICUT,
NATIONAL ASSOCIATION

By: _____
Name:
Title:

Receipt of the original counterpart of the foregoing Lease and ETA Supplement is hereby acknowledged this _____ day of January, 1992.

STATE STREET BANK AND TRUST COMPANY
OF CONNECTICUT, NATIONAL ASSOCIATION,
as Equipment Trust Trustee

By: _____
Name:
Title:

STATE OF _____)
) SS:
COUNTY OF _____)

On this ____ day of January, 1992, before me personally appeared _____ to me personally known, who being by me duly sworn, says that he/she is a _____ of Wilmington Trust Company, that said instrument was signed and sealed on January ___, 1992, on behalf of said corporation by authority of its Board of Directors; and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

By _____
Notary Public

(SEAL)

My Commission Expires: _____

STATE OF _____)
) SS:
COUNTY OF _____)

On this ____ day of January, 1992, before me personally appeared _____ to me personally known, who being by me duly sworn, says that he is a _____ of Burlington Northern Railroad Company, that said instrument was signed and sealed on January ___, 1992, on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

By _____
Notary Public

(SEAL)

My Commission Expires: _____

STATE OF _____)
) SS:
COUNTY OF _____)

On this ____ day of January, 1992, before me personally appeared _____ to me personally known, who being by me duly sworn, says that he/she is a _____ of State Street Bank and Trust Company of Connecticut, National Association, that said instrument was signed and sealed on January ___, 1992, on behalf of said association by authority of its Board of Directors; and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

By _____
Notary Public

(SEAL)

My Commission Expires: _____

SCHEDULE 1
Lease and ETA Supplement (BN 1992-A)

EQUIPMENT	QUANTITY	REPORTING MARKS
SD60-M New Locomotives	36	BN9264 - BN9298, both inclusive, and BN1991
GP39-2 Remanufactured Locomotives	17	BN2762 - BN2778, both inclusive
Double Stack Flatcars	20	BN64050 - BN64069, both inclusive

DEFINITIONS

GENERAL PROVISIONS

The following terms shall have the following meanings for all purposes of the Operative Agreements referred to below, unless otherwise defined in an Operative Agreement or the context thereof shall otherwise require and such meanings shall be equally applicable to both the singular and the plural forms of the terms herein defined. In the case of any conflict between the provisions of this Appendix A and the provisions of the main body of any Operative Agreement, the provisions of the main body of such Operative Agreement shall control the construction of such Operative Agreement.

Unless the context otherwise requires, (i) references to agreements shall be deemed to mean and include such agreements as the same may be amended, supplemented and otherwise modified from time to time, and (ii) references to parties to agreements shall be deemed to include the permitted successors and assigns of such parties.

DEFINED TERMS

"Affiliate" of any Person shall mean any other Person which directly or indirectly controls, or is controlled by, or is under a common control with, such Person. The term *"control"* means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and the terms *"controlling"* and *"controlled"* shall have meanings correlative to the foregoing.

"Appraisal" shall have the meaning specified in Section 4.3(a) of the Participation Agreement.

"Assignment of Warranties" shall mean each Assignment of Warranties (BN 1992-A), dated the applicable Closing Date between the Owner Participant and the Owner Trustee covering the Equipment delivered on such Closing Date, as amended, supplemented or otherwise modified from time to time.

"Bankruptcy Code" shall mean the United States Bankruptcy Reform Act of 1978, as amended from time to time, 11 U.S.C. §101 *et seq.*

"Basic Rent" shall mean, with respect to any Unit of Equipment, all rent payable by the Lessee to the Lessor pursuant to Section 3.2 of the Lease for the Basic Term for such Unit, and all rent payable pursuant to Section 22.2 of the Lease for any Renewal Term for such Unit.

Appendix A
(Equipment Lease Agreement; Equipment Trust Agreement)

"Basic Term" shall have the meaning specified in Section 3.1 of the Lease.

"Basic Term Commencement Date" shall mean July 14, 1992.

"Basic Term Expiration Date" shall mean July 14, 2013.

"Beneficial Interest" shall mean the interest of the Owner Participant under the Trust Agreement.

"Bill of Sale" shall mean each bill of sale, dated the applicable Closing Date, from the Owner Participant to the Owner Trustee covering the Equipment delivered on such Closing Date, substantially in the form of Exhibit B to the Participation Agreement.

"Book-Entry Certificates" means a beneficial interest in the Certificates, ownership and transfers of which shall be made through book entries by a Clearing Agency as described in Section 2.14 of the Equipment Trust Agreement.

"Business Day" shall mean any day other than a Saturday, Sunday or a day on which commercial banking institutions are authorized or required by law, regulation or executive order to be closed in New York, New York, Forth Worth, Texas, the city in which the principal place of business of the Owner Participant is located, the city and state in which the principal corporate trust office of the Owner Trustee is located, and, until the lien of the Equipment Trust Agreement has been discharged, Boston, Massachusetts and the city and state in which the principal corporate trust office of the Equipment Trust Trustee is located.

"Certificate of Acceptance" shall have the meaning specified in Section 2.3(b) of the Participation Agreement.

"Certificate Owner" means, when used in Section 2.14 of the Equipment Trust Agreement, a Person who owns a Book-Entry Certificate.

"Certificate Rate" means the weighted average rate of interest borne by the Certificates at the time Outstanding.

"Certificates" or *"Equipment Trust Certificates"* shall mean the Equipment Trust Certificates, each to be substantially in the form therefor set forth in Section 2.01 of the Equipment Trust Agreement, in principal amounts and bearing interest at the rates and payable as provided in Section 2.01 of the Equipment Trust Agreement and secured as provided in the Granting Clause of the Equipment Trust Agreement, and shall include any Equipment Trust Certificates issued in exchange therefor or replacement thereof pursuant to Section 2.07 or 2.08 of the Equipment Trust Agreement.

"Certificates relating to" a Unit of Equipment means, at any time, Certificates Outstanding at such time having an aggregate principal amount determined by multiplying (a) the principal amount of all Certificates Outstanding at such time by (b) a fraction, the

numerator of which is the Cost of such Unit of Equipment and the denominator of which is the Cost of all Units of Equipment then subject to the Lease.

"Change in Tax Law" shall mean a change, amendment, modification, addition or deletion in or to the Code, any regulation thereunder (whether proposed, temporary or final) or any Revenue Ruling, Revenue Procedure or other published administrative determination, in each case after the execution and delivery of the Participation Agreement.

"Clearing Agency" means an organization registered as a "clearing agency" pursuant to Section 17A of the Securities Exchange Act of 1934, as amended.

"Clearing Agency Participant" means a broker, dealer, bank, other financial institution or other Person for whom from time to time a Clearing Agency effects, directly or indirectly, book-entry transfers and pledges of securities deposited with the Clearing Agency.

"Closing Date" shall have the meaning specified in Section 2.1(a) of the Participation Agreement.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"Commitment", with respect to the Owner Participant, shall have the meaning specified in Section 2.2(a) of the Participation Agreement and, with respect to the Equipment Trust Trustee, shall have the meaning specified in Section 2.2(b) to the Participation Agreement.

"Co-Registrar" has the meaning set forth in Section 2.04 of the Equipment Trust Agreement.

"Defaulted Interest" has the meaning set forth in Section 2.09(b) of the Equipment Trust Agreement.

"Definitive Certificates" has the meaning set forth in Section 2.14 of the Equipment Trust Agreement.

"Deposited Cash" means the aggregate of (i) cash deposited with the Equipment Trust Trustee as provided by Section 3.01 of the Equipment Trust Agreement and (ii) when required or indicated by the context, any Permitted Investment purchased by the use of such cash pursuant to Section 8.04(b) of the Equipment Trust Agreement.

"Equipment" shall mean collectively those items of railroad rolling stock described in the Lease and ETA Supplements, together with any and all accessions, additions, improvements and replacements from time to time incorporated or installed in any item thereof which are the property of the Owner Trustee pursuant to the terms of the Lease, and *"Unit"* shall mean individually the various items thereof.

"Equipment Cost" shall mean, for each Unit, the purchase price therefor paid by the Owner Trustee to the Owner Participant pursuant to Section 2 of the Participation Agreement and as set forth in Schedule 1 to the Participation Agreement with respect to such Unit.

"Equipment Trust Agreement" means the Equipment Trust Agreement dated as of January 1, 1992 between the Owner Trustee and the Equipment Trust Trustee, as the same may be supplemented, amended or otherwise modified from time to time in accordance with the applicable provisions thereof and of the Participation Agreement.

"Equipment Trust Estate" has the meaning set forth in Section 4.03 of the Equipment Trust Agreement.

"Equipment Trust Trustee" means State Street Bank and Trust Company of Connecticut, National Association, a national banking association, not in its individual capacity but solely as trustee under the Equipment Trust Agreement, and each other Person which may from time to time be acting as Equipment Trust Trustee in accordance with the provisions of the Equipment Trust Agreement.

"Equipment Trust Trustee Agreements" shall mean the Operative Agreements to which the Equipment Trust Trustee is or will be a party.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, or any successor law.

"ETA Default" means any event which is or after notice or passage of time, or both, would be an Event of Acceleration.

"ETA Lease Term" has the meaning set forth in Section 5.02 of the Equipment Trust Agreement.

"ETA Rent" has the meaning set forth in Section 5.03 of the Equipment Trust Agreement.

"Event of Acceleration" has the meaning set forth in Section 7.01 of the Equipment Trust Agreement.

"Event of Loss" shall have the meaning specified in Section 11.1 of the Lease.

"Excepted Property" shall mean (i) any right, title or interest of the Owner Trustee in its individual capacity or the Owner Participant to any payment which by the terms of Section 7 of the Participation Agreement, Section 17 of the Lease, Section 5.03 or 7.01 of the Trust Agreement or any section of the Tax Indemnity Agreement or any corresponding payment under Section 3.3 of the Lease shall be payable to the Owner Trustee in its individual capacity or to the Owner Participant, as the case may be, (ii) any insurance proceeds payable under insurance maintained by the Owner Trustee in its individual capacity

or the Owner Participant pursuant to Section 12.3 of the Lease, (iii) any insurance proceeds payable to the Owner Trustee in its individual capacity or to the Owner Participant, under any public liability insurance maintained by Lessee pursuant to Section 12 of the Lease or by any other Person, (iv) any rights of the Owner Participant or the Owner Trustee in its individual capacity to demand, collect, sue for, or otherwise receive and enforce payment of the foregoing amounts and (v) the respective rights of the Owner Trustee in its individual capacity or the Owner Participant to the proceeds of the foregoing.

"Fair Market Renewal Term" shall have the meaning specified in Section 22.3 of the Lease.

"Fair Market Rental Value" or *"Fair Market Sales Value"* with respect to any Unit of Equipment shall mean the cash rent or cash price obtainable for such Unit in an arm's length lease or sale between an informed and willing lessee or purchaser under no compulsion to lease or purchase, as the case may be, and an informed and willing lessor or seller, under no compulsion to lease or sell, as the case may be, as the same shall be specified by agreement between Lessor and Lessee (or Purchase Option Holder, in the case of the exercise of a purchase option). Lessee, upon delivering to Lessor its revocable notice of exercise of its option to renew the Lease with respect to any Unit, and the Purchase Option Holder, upon delivering to Lessor its revocable notice of its exercise of its option to purchase any Unit, shall in such notice set forth a rental value or purchase price for such Unit or Units, as the case may be. If the parties are unable to agree upon a Fair Market Rental Value and/or a Fair Market Sales Value within 30 days after delivery of the aforementioned notice by Lessee or Purchase Option Holder, as the case may be, the purchase price of such Unit or Units shall be determined by appraisal. Lessee or Purchase Option Holder, as the case may be, will within 15 days after such 30-day period provide Lessor the name of an appraiser that would be satisfactory to Lessee or Purchase Option Holder, as the case may be, and Lessor and Lessee or Purchase Option Holder, as the case may be, will consult with the intent of selecting a mutually acceptable appraiser. If a mutually acceptable appraiser is selected, the Fair Market Rental Value or the Fair Market Sales Value, as the case may be, shall be determined by such appraiser and Lessor and Lessee or Purchase Option Holder, as the case may be, shall each bear one half of the cost thereof. If Lessee or Purchase Option Holder, as the case may be, and Lessor are unable to agree upon a single appraiser within such 15-day period, Lessor will retain an appraiser within 15 days. The appraiser selected by Lessee or Purchase Option Holder, as the case may be, and the appraiser selected by Lessor shall select a consensus appraiser Within 30 days. If the appraisers cannot agree on a consensus appraiser within 30 days, the Fair Market Rental Value, and/or Fair Market Value shall be determined by arbitration pursuant to the commercial arbitration rules of the American Arbitration Association and the cost of such determination shall be borne equally by Lessee or Purchase Option Holder, as the case may be, and Lessor, except that Lessee or Purchase Option Holder, as the case may be, shall bear the cost of the appraiser selected by Lessee or Purchase Option Holder, as the case may be, and Lessor shall bear the cost of the appraiser selected by Lessor. If the parties are able to agree upon a single appraiser or the two appraisers are able to agree upon a consensus appraiser, the single appraiser or the three appraisers, as the case may be, shall within 30 days make a determination of such Fair Market Rental Value and/or Fair Market Sales Value. If there shall be a panel of three

appraisers, the appraisal which differs most from the other two appraisals with respect to Fair Market Rental Value and Fair Market Sales Value, each considered separately, shall be excluded and the remaining two appraisals shall be averaged and such average shall constitute the Fair Market Rental Value or Fair Market Value, as appropriate. If there shall be a panel of three appraisers, Lessee or Purchase Option Holder, as the case may be, shall bear the cost of the appraiser selected by Lessee or Purchase Option Holder, Lessor shall bear the cost of the appraiser selected by Lessor, and Lessee or Purchase Option Holder, as the case may be, and Lessor shall equally share the cost of the consensus appraiser. If Lessee revokes its notice to renew the lease or the Purchase Option Holder revokes its notice to purchase any Unit, Lessee or Purchase Option Holder, as the case may be, will pay the cost of the appraisal. If such appraisal is in connection with the exercise of remedies set forth in Section 15 of the Lease, Lessee shall pay the costs of such appraisal.

"Final Rent Payment Date" shall mean, for each Unit, the last Rent Payment Date during the Basic Term applicable to such Unit.

"Fixed Purchase Price" shall mean, with respect to any Unit, the amount equal to the product of 47% and the Equipment Cost for such Unit.

"Fixed Rate Renewal Term" shall have the meaning specified in Section 22.2 of the Lease.

"Guaranty" means the guaranty of the Owner Trustee endorsed on each Certificate, substantially in the form set forth in Exhibit A to the Equipment Trust Agreement.

"Holder" means a Person in whose name a Certificate is registered on the Register.

"ICC" means the Interstate Commerce Commission and any agency or instrumentality of the United States government succeeding to its functions.

"Indemnified Person" shall have the meaning specified in Section 7.2(b) of the Participation Agreement.

"Independent Appraisal" means an appraisal mutually agreed to by two nationally recognized independent appraisers, one of which appraisers shall be chosen by Lessor and one by Lessee or the Purchase Option Holder, as applicable, or, if such two appraisers cannot agree, an appraisal arrived at by a third nationally recognized independent appraiser chosen by the mutual consent of such two appraisers; *provided* that, if either party shall fail to appoint an appraiser within 15 days after a written request to do so by the other party, or if such two appraisers cannot agree and fail to appoint a third appraiser within 20 days after the date of the appointment of the second of such appraisers, then either party may apply to the American Arbitration Association to make such appointment. In the event such third independent appraiser shall be chosen to provide such appraisal, unless the parties agree otherwise, such appraisal shall be required to be made within 20 days of such appointment. Fees and expenses relating to an Independent Appraisal shall be payable as follows:

(i) if the Independent Appraisal is to be used in connection with the exercise of remedies upon the occurrence of an Event of Default under the Lease or in contemplation of the possible exercise of a renewal option pursuant to Section 19 of the Lease, all such fees and expenses shall be paid by Lessee;

(ii) if the Independent Appraisal is to be used in connection with the possible exercise of a purchase option pursuant to Section 9 of the Participation Agreement, then each party shall bear its respective fees and expenses; *provided* (A) if an appraisal shall, by agreement of the parties, be conducted by one appraiser only, the Purchase Option Holder shall bear the fees and expenses of such appraiser, or (B) if an appraisal under the Independent Appraisal shall be conducted by more than one appraiser, the Purchase Option Holder shall bear the fees and expenses of the appraiser appointed by the Purchase Option Holder and of the appraiser appointed jointly by the appraiser of the Purchase Option Holder and the appraiser of Lessor; and *provided, further*, that if after the utilization of such Independent Appraisal the Purchase Option Holder does not exercise such purchase option, then the Purchase Option Holder shall reimburse Lessor for all fees and expenses paid by Lessor in respect of such Independent Appraisal; and

(iii) in all other instances, each party shall bear (A) its respective expenses with respect to any Independent Appraisal (including the fees and expenses of any appraiser appointed by such party) and (B) one-half of the fees and expenses of the appraisers participating in any Independent Appraisal.

"Independent Investment Banker" means an independent investment banking institution of national standing appointed by Lessee (who shall be reasonably acceptable to the Owner Participant) on behalf of the Owner Trustee; provided, that if the Equipment Trust Trustee shall not have received written notice of such an appointment at least 10 days prior to the applicable Redemption Date or if an Event of Default shall have occurred and be continuing, *"Independent Investment Banker"* shall mean such an institution appointed by the Equipment Trust Trustee. The fees and expenses of such Independent Investment Banker shall be paid by Lessee.

"Interchange Rules" shall mean the interchange rules or supplements thereto of the Mechanical Division of the Association of American Railroads, as the same may be in effect from time to time.

"Interest Payment Date" means each January 14 and July 14, commencing July 14, 1992, so long as any Certificate remains Outstanding.

"Interim Rent" shall mean, with respect to any Unit of Equipment, all rent payable by the Lessee to the Lessor pursuant to Section 3.2 of the Lease for the Interim Term for such Unit.

"Interim Term" shall have the meaning specified in Section 3.1 of the Lease.

"Investment Banker" shall mean an independent investment banking institution of national standing appointed by Lessee.

"Investment Proceeds" means the net profit, income, interest, dividend or gain actually realized from the making of Permitted Investments of any Deposited Cash.

"Late Rate" shall mean (a) for such period of time as the Equipment Trust Certificates are Outstanding, (i) with respect to the portion of any payment of Rent that would be required to be distributed to the holders of the Equipment Trust Certificates pursuant to the terms of the Equipment Trust Agreement, the lesser of 2% over the weighted average rate of interest borne by the Equipment Trust Certificates at the time Outstanding and the maximum interest rate from time to time permitted by law, and (ii) with respect to the portion of any payment of Rent that would be required to be distributed to Lessor pursuant to the terms of the Equipment Trust Agreement or would be payable directly to Lessor, the Owner Participant or the Owner Trustee in its individual capacity, the lesser of 2% over the Prime Rate and the maximum interest rate from time to time permitted by law, and (b) at any time thereafter, the lesser of 2% over the Prime Rate and the maximum interest rate from time to time permitted by law.

"Lease" or *"Lease Agreement"* or *"Equipment Lease"* shall mean the Equipment Lease Agreement (BN 1992-A), relating to the Equipment, dated as of January 1, 1992, between the Owner Trustee, in the capacities described therein, as Lessor, and the Lessee, as amended, supplemented or otherwise modified from time to time. The term *"Lease"* shall include each Lease and ETA Supplement entered into pursuant to the terms of the Lease.

"Lease and ETA Supplement" shall mean a Lease and ETA Supplement (BN 1992-A), dated a Closing Date, substantially in the form of Exhibit A to the Lease, between the Owner Trustee, the Lessee, and the Equipment Trust Trustee covering the Units delivered on such Closing Date.

"Lease Default" shall mean a Lease Event of Default or an event which with notice or lapse of time or both would become a Lease Event of Default.

"Lease Event of Default" and *"Event of Default"* shall mean an Event of Default under the Lease as specified in Section 14 thereof.

"Lease Term" shall mean, with respect to any Unit, the Interim Term applicable to such Unit, the Basic Term applicable to such Unit and any Renewal Term applicable to such Unit then in effect.

"Lessee" shall mean Burlington Northern Railroad Company, a Delaware corporation, and any corporation which succeeds thereto by merger or consolidation or which acquires all or substantially all of the assets thereof.

"Lessee Agreements" shall mean the Operative Agreements to which Lessee is a party.

"Lessor" shall have the meaning specified in the recitals to the Lease.

"Lessor's Liens" means any Lien affecting, on or in respect of the Equipment, the Lease or the Owner Trust Estate arising as a result of (i) claims against or affecting Lessor (in its individual capacity or as Owner Trustee) or the Owner Participant, not related to the transactions contemplated by the Lease or the Participation Agreement, or (ii) acts or omissions of the Lessor (in its individual capacity or as Owner Trustee) or the Owner Participant, not related to the transactions contemplated by the Lease or the Participation Agreement, or not permitted under the Lease or under the Participation Agreement or in breach of any covenant or agreement of such Person set forth in any of the Operative Agreements, or (iii) taxes imposed against the Lessor (in its individual capacity or as Owner Trustee) or the Owner Participant or the Owner Trust Estate which are not indemnified against by the Lessee pursuant to the Participation Agreement or under the Tax Indemnity Agreement, or (iv) claims against the Lessor or the Owner Participant arising out of the transfer (whether voluntary or involuntary) of the Lessor (in its individual capacity or as Owner Trustee) or the Owner Participant (without the consent of the Lessee and the Equipment Trust Trustee) of all or any portion of their respective interests in the Equipment, the Owner Trust Estate or the Operative Agreements, other than a transfer pursuant to Sections 11, 12 or 15 of the Lease or Section 9 of the Participation Agreement.

"Letter of Representations" means the agreement among Lessee, the Equipment Trust Trustee and the initial Clearing Agency with regard to the Certificates.

"Lien" shall mean any mortgage, pledge, security interest, lien, encumbrance, lease, exercise of rights, claim, disposition of title or other charge of any kind on property.

"Losses" shall have the meaning specified in the Tax Indemnity Agreement.

"Majority In Interest", as of a particular date of determination, with respect to any action or decision of the Holders, shall mean the Holders of more than 50% in aggregate principal unpaid amount of the Certificates, if any, then outstanding which are affected by such decision or action, excluding any Certificates held by the Owner Participant or an Affiliate of the Owner Participant.

"Make-Whole Amount" means, with respect to any Certificate to be redeemed on a particular Redemption Date, the amount, if any, by which the sum of the principal amount thereof plus the accrued but unpaid interest thereon to such Redemption Date shall be exceeded by the sum of the present values of all remaining scheduled payments of such principal amount and interest thereon (excluding interest accrued from the immediately preceding Interest Payment Date to such Redemption Date) to the stated maturity of such Certificate computed on a semiannual basis by discounting such payments in accordance with generally accepted financial practices assuming a 360-day year consisting of twelve 30-day months at a discount rate equal to Treasury Yield, all as determined by the Independent Investment Banker.

"Modification" shall have the meaning specified in Section 9.2 of the Lease.

"Net Economic Return" shall mean the aggregate after-tax book yield expected by the original Owner Participant with respect to the Equipment, utilizing the multiple investment sinking fund method of analysis and the same assumptions as used by such Owner Participant (including the Tax Assumptions set forth in Section 1 of the Tax Indemnity Agreement) in making the original computations upon which its evaluation of its investment in the Equipment was based.

"Non-Severable Modification" shall mean any Modification that is not readily removable without causing material damage to the Equipment or any Unit.

"Offering Circular" means the Offering Circular dated January 8, 1992 with regard to the Certificates.

"Officer's Certificate" shall mean a certificate signed (i) in the case of a corporation by the President, any Vice President, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of such corporation, (ii) in the case of a partnership by the Chairman of the Board, the President or any Vice President, the Treasurer or an Assistant Treasurer of a corporate general partner, and (iii) in the case of a commercial bank or trust company, the Chairman or Vice Chairman of the Executive Committee or the Treasurer, any Trust Officer, any Vice President, any Executive or Senior or Second or Assistant Vice President, or any other officer or assistant officer customarily performing the functions similar to those performed by the persons who at the time shall be such officers, or to whom any corporate trust matter is referred because of his knowledge of and familiarity with the particular subject.

"Operative Agreements" shall mean the Participation Agreement, the Bills of Sale, the Quitclaim Bills of Sale, the Trust Agreement, the Equipment Trust Certificates, the Assignments of Warranties, the Lease, each Lease and ETA Supplement, the Equipment Trust Agreement and the Tax Indemnity Agreement.

"Opinion of Counsel" means a written opinion of legal counsel who, in the case of counsel for Lessee, may be the senior attorney employed by Lessee or other in-house or outside legal counsel designated by Lessee and who shall be satisfactory to the Equipment Trust Trustee and the Owner Participant, or, in the case of legal counsel for the Owner Trustee, may be Potter, Anderson & Corroon, or other legal counsel designated by the Owner Trustee and satisfactory to the Equipment Trust Trustee and the Owner Participant.

"Outstanding", when used with respect to Certificates, means, as of the date of determination, all Certificates theretofore authenticated and delivered under the Equipment Trust Agreement, other than:

- (a) Certificates theretofore cancelled by the Equipment Trust Trustee or delivered to the Equipment Trust Trustee for cancellation pursuant to Section 2.08 of the Equipment Trust Agreement or otherwise;

(b) Certificates for the payment or redemption of which money in the necessary amount has been theretofore deposited with the Equipment Trust Trustee in trust for the Holders of such Certificates; *provided* that, if such Certificates are to be redeemed, notice of such redemption has been duly given pursuant to the Equipment Trust Agreement or provision therefor satisfactory to the Equipment Trust Trustee has been made; and

(c) Certificates in exchange for or in lieu of which other Certificates have been authenticated and delivered pursuant to the Equipment Trust Agreement;

provided, however, that in determining whether the Holders of the requisite principal amount of Certificates Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under any Operative Agreement, Certificates owned by Lessee or any Affiliate of Lessee shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Equipment Trust Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Certificates which the Equipment Trust Trustee knows to be so owned shall be disregarded. Certificates so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Equipment Trust Trustee that the pledgee has the right so to act with respect to such Certificates and that the pledgee is not Lessee or any obligor upon the Certificates or any Affiliate of Lessee or such obligor.

"Owner Participant" shall mean BN Leasing Corporation, a Delaware corporation, and its permitted successors and assigns.

"Owner Participant Agreements" shall mean the Operative Agreements to which the Owner Participant is or will be a party.

"Owner Trustee" shall mean Wilmington Trust Company, a Delaware banking corporation, not in its individual capacity but solely as Owner Trustee under the Trust Agreement and its successors thereunder.

"Owner Trustee Agreements" shall mean the Operative Agreements to which the Owner Trustee, either in its individual or fiduciary capacity, is or will be a party.

"Owner Trustee Request" means a request by the Owner Trustee setting forth the subject matter of the request.

"Owner Trust Estate" means all estate, right, title and interest of the Owner Trustee in and to the Units of Equipment, the Lease, including, without limitation, all amounts of Interim Rent, Basic Rent, Supplemental Rent, insurance proceeds (other than any insurance proceeds payable under liability policies to or for the benefit of the Owner Trustee, for its own account or in its individual capacity, the Owner Participant, or the Equipment Trust Trustee) and requisition, condemnation, indemnity or other payments of any kind for or with respect to the Units of Equipment, including, without limitation, any and all payments and proceeds received by the Owner Trustee after the termination of the Lease with respect

to any Unit of Equipment resulting from the sale, lease or other disposition thereof, subject, however, to the provisions of and the lien created under the Equipment Trust Agreement. Notwithstanding the foregoing, "*Owner Trust Estate*" shall not include any Excluded Payments.

"*Participation Agreement*" shall mean the Participation Agreement (BN 1992-A) dated as of January 1, 1992, among the Lessee, the Owner Participant, the Owner Trustee and the Equipment Trust Trustee.

"*Paying Agent*" has the meaning set forth in Section 2.04 of the Equipment Trust Agreement.

"*Permitted Investments*" shall mean (i) direct obligations of the United States of America and agencies thereof for which the full faith and credit of the United States is pledged, (ii) obligations fully guaranteed by the United States of America, (iii) certificates of deposit issued by, or bankers' acceptances of, or time deposits with, any bank, trust company or national banking association incorporated or doing business under the laws of the United States of America or one of the States thereof having combined capital and surplus and retained earnings of at least \$500,000,000 (including the Equipment Trust Trustee and the Owner Trustee if such conditions are met), (iv) commercial paper of companies, banks, trust companies or national banking associations incorporated or doing business under the laws of the United States of America or one of the States thereof and in each case having a rating assigned to such commercial paper by Standard & Poor's Corporation or Moody's Investor's Service, Inc. (or, if neither such organization shall rate such commercial paper at any time, by any nationally recognized rating organization in the United States of America) equal to the highest rating assigned by such organization, and (v) purchase agreements with any financial institution having a combined capital and surplus of at least \$750,000,000 fully collateralized by obligations of the type described in clauses (i) through (iv) above; *provided* that if all of the above investments are unavailable, the entire amount to be invested may be used to purchase Federal Funds from an entity described in (iii) above; and *provided further* that no investment shall be eligible as a "*Permitted Investment*" unless the final maturity or date of return of such investment is 180 days or less from the date of purchase thereof.

"*Permitted Liens*" with respect to the Equipment and each Unit thereof, shall mean: (i) the interests of the Lessee and the Owner Trustee under the Lease and the Lease and ETA Supplements; (ii) the interest of the Lessee and any sublessee as provided in any sublease permitted pursuant to Section 8.3 of the Lease; (iii) any Liens thereon for taxes, assessments, levies, fees and other governmental and similar charges not due and payable or the amount or validity of which is being contested in good faith by appropriate proceedings so long as there exists no material risk of sale, forfeiture, loss, or loss of use of any Unit or any interest therein; (iv) any Liens of mechanics, suppliers, materialmen, laborers, employees, repairmen and other like Liens arising in the ordinary course of Lessee's (or if a sublease is then in effect, any sublessee's) business securing obligations which are not due and payable or the amount or validity of which is being contested so long as there exists no material risk of sale, forfeiture, loss, or loss of use of any Unit; (v) the Lien and security

interest granted to the Equipment Trust Trustee under and pursuant to the Equipment Trust Agreement, and the respective rights of the Equipment Trust Trustee, the Owner Participant and the Owner Trustee under the Operative Agreements; (vi) Liens arising out of any judgment or award against the Lessee (or any sublessee permitted pursuant to Section 8.3 of the Lease) with respect to which an appeal or proceeding for review is being presented in good faith and with respect to which there shall have been secured a stay of execution pending such appeal or proceeding for review; (vii) salvage rights of insurers under insurance policies maintained pursuant to Section 12; and (viii) any other Lien with respect to which the Lessee (or any sublessee) shall have provided a bond adequate in the reasonable opinion of the Owner Trustee and the Equipment Trust Trustee.

"Person" shall mean an individual, partnership, corporation, trust, association or unincorporated organization, and a government or agency or political subdivision thereof.

"Potential Default" means an event which but for the giving of notice or the lapse of time or both would constitute an Event of Default.

"Prime Rate" shall mean the rate of interest publicly announced from time to time by Citibank, N.A. in New York as its "base rate".

"Purchase Option Holder" shall mean Burlington Northern Inc., a Delaware corporation, and its successors and assigns.

"Quitclaim Bill of Sale" shall mean each quitclaim bill of sale, dated the applicable Closing Date, from the Owner Trustee to the Equipment Trust Trustee covering the Equipment delivered on such Closing Date, substantially in the form of Exhibit D to the Equipment Trust Agreement.

"Record Date" for the interest payable on any Interest Payment Date, means (a) in the case of an Interest Payment Date which is January 14, the preceding December 31 and (b) in the case of an Interest Payment Date which is July 14, the preceding June 30.

"Redemption Date" means (a) in the case of a redemption of Certificates pursuant to Section 6.02(A) of the Equipment Trust Agreement, March 15, 1992; (b) in the case of a redemption of Certificates pursuant to Section 6.02(B) of the Equipment Trust Agreement upon an Event of Loss or in the event a Unit is subject to the last sentence of Section 9.1 of the Lease, the applicable Rent Payment Date; and (c) in the case of a redemption of Certificates pursuant to Section 6.02(C) or 6.02(D) of the Equipment Trust Agreement, the 30th day after the Equipment Trust Trustee shall have received from or on behalf of the Owner Trustee a notice of redemption pursuant to Section 7.04(b) of the Equipment Trust Agreement (or if such day is not a Business Day, the next succeeding Business Day).

"Register" has the meaning set forth in Section 2.04 of the Equipment Trust Agreement.

"Registrar" has the meaning set forth in Section 2.04 of the Equipment Trust Agreement.

"Regulations" means the Treasury Regulations, as amended from time to time, promulgated under the Code by the United States Treasury Department.

"Renewal Term" shall mean, with respect to any Unit, any term in respect of which the Lessee shall have exercised its option to renew the Lease for such Unit pursuant to Section 22.2 thereof, including any Fixed Rate Renewal Term.

"Renewal Term Commencement Date" shall mean the first day following the end of the Basic Term or the immediately preceding Renewal Term if a renewal has been effected.

"Rent" shall mean all Basic Rent and Supplemental Rent.

"Rent Payment Date" or *"Payment Date"* shall mean each January 14 and July 14 of each year occurring during the Lease Term, *provided* that if any such date shall not be a Business Day, then *"Rent Payment Date"* or *"Payment Date"* shall mean the next succeeding Business Day.

"Replacement Unit" shall mean a Unit of Equipment having substantially the same utility and Fair Market Rental Value as the Unit of Equipment being replaced, which shall have been leased under the Lease pursuant to Section 11.4 of the Lease.

"Required Modification" shall have the meaning specified in Section 9.1 of the Lease.

"Responsible Officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of any party contained in any Operative Agreement, the President, or any Vice President, Assistant Vice President, Treasurer, Assistant Treasurer or other officer, who in the normal performance of his operational responsibility would have knowledge of such matters and the requirements with respect thereto.

"Scheduled Closing Date" shall have the meaning specified in Section 2.7 of the Participation Agreement.

"Security" shall have the same meaning as in Section 2(1) of the Securities Act of 1933, as amended.

"Severable Modification" shall mean any Modification that is readily removable without causing material damage to the Equipment or any Unit.

"Stipulated Loss Value" payable with respect to an Event of Loss or deemed Event of Loss for any Unit as of any date of determination shall mean the amount determined by multiplying the Equipment Cost for such Unit by the percentage set forth in Schedule 4 to the Participation Agreement opposite the Rent Payment Date on which such Stipulated Loss Value will be paid; *provided* that during any Renewal Term, *"Stipulated Loss Value"* shall

be determined as provided in Section 22.5 of the Lease. Anything contained herein or in the Participation Agreement to the contrary notwithstanding, Stipulated Loss Value for such Unit (both before and after any adjustment pursuant to Section 2.6 of the Participation Agreement) will, under any circumstances and in any event, be an amount which, together with any other amounts required to be paid by Lessee hereunder in connection with such Event of Loss, will be at least sufficient to pay in full as of the date of payment thereof the aggregate unpaid principal of the Equipment Trust Certificates issued in respect of such Unit, together with all unpaid interest thereon accrued to the date on which such amount is paid in accordance with the terms hereof.

"Subsidiary" of any Person shall mean any corporation, association, or other business entity of which more than 50% (by number of votes) of the voting stock at the time outstanding shall at the time be owned, directly or indirectly, by such Person or by any other corporation, association or trust which is itself a Subsidiary within the meaning of this definition, or collectively by such Person and any one or more such Subsidiaries.

"Supplemental Rent" shall mean all amounts, liabilities and obligations (other than Basic Rent) which the Lessee is obligated to pay under the Operative Agreements to or on behalf of any of the other parties thereto, including, but not limited to, Stipulated Loss Value payments, and amounts, if any, payable, under Section 2.5 of the Participation Agreement (to the extent such payment does not give rise to a rental adjustment under Section 2.6 of the Participation Agreement) by the Lessee.

"Taxes" shall have the meaning specified in Section 7.1(b) of the Participation Agreement.

"Tax Indemnity Agreement" shall mean the Tax Indemnity Agreement dated as of January 1, 1992 between the Lessee and the Owner Participant.

"Temporary Certificates" means Certificates issued to Holders pursuant to Section 2.03 of the Equipment Trust Agreement.

"Title Documents", with respect to any Unit of Equipment, means the Bill of Sale covering such Unit of Equipment and, in the case of Title Documents furnished by Owner Participant, an opinion of counsel of Owner Participant in the customary form.

"Total Equipment Cost" shall mean the sum of the Equipment Cost for each Unit.

"Transaction Costs" shall have the meaning specified in Section 2.5(a) of the Participation Agreement.

"Transferee" shall have the meaning specified in Section 6.1(a) of the Participation Agreement.

"Treasury Yield", with respect to any Certificate to be redeemed pursuant to Section 6.02 of the Equipment Trust Agreement on a particular Redemption Date, means a

per annum rate (expressed as a semiannual equivalent and as a decimal and, in the case of United States Treasury bills, converted to a bond equivalent yield) determined to be the per annum rate equal to the yield to maturity of the most comparable United States Treasury security as identified by the Independent Investment Banker corresponding in maturity to the maturity of such Certificate or, if there is no such corresponding maturity, an interpolation of maturities, in each case as determined by the Independent Investment Banker based upon the average of the yields to maturity determined from the bid prices as of 10:00 A.M. and 2:00 P.M., New York City time, on the second Business Day preceding such Redemption Date.

"Trust Agreement" shall mean that certain Trust Agreement (BN 1992-A), dated as of January 1, 1992, between the Owner Participant and the Owner Trustee, in the capacities described therein, as amended, supplemented or otherwise modified from time to time.

"Trustee" shall mean each of the Owner Trustee or the Equipment Trust Trustee and *"Trustees"* shall mean the Owner Trustee and the Equipment Trust Trustee collectively.

"Trustee's Lien" shall mean any Lien arising as a result of (i) claims against or affecting the Equipment Trust Trustee (in its individual capacity or as Equipment Trust Trustee) not related to the transactions contemplated by the Equipment Trust Agreement, the Lease or the Participation Agreement, or (ii) acts or omissions of the Equipment Trust Trustee (in its individual or trust capacity) not related to the transactions contemplated by the Equipment Trust Agreement, the Lease or the Participation Agreement or not permitted under the Lease, the Participation Agreement or the Equipment Trust Agreement.

"Underwriter" shall mean Morgan Stanley & Co. Incorporated and Citicorp Securities Markets, Inc., as co-underwriters.

"Uniform Commercial Code" shall mean the Uniform Commercial Code of the State of New York.

"Unit" shall mean each unit or item of Equipment.